



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-11661
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2013

Decision

WHITE, David M., Administrative Judge:

Applicant accrued about \$19,000 in delinquent debts over the past 11 years. She made minimal progress toward their resolution, and offered insufficient evidence of an effective plan to resolve these debts or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on October 10, 2011.¹ On March 20, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹Item 5.

²Item 1.

Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective in the Department of Defense on September 1, 2006.

Applicant received the SOR on March 28, 2013.³ She submitted a written response on April 3, 2013, and requested that her case be decided by an administrative judge on the written record without a hearing.⁴ Department Counsel submitted the Government's written case on May 8, 2013. A complete copy of the File of Relevant Material (FORM)⁵ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on May 21, 2013, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on July 25, 2013.

Findings of Fact

Applicant is 43 years old and the unmarried mother of four children ages 21, 19, 14, and 13. She has worked for a defense contractor since May 2008, and held her present position since October 2011. She earned a certificate of completion from a technical school in 1990, then earned an associate's degree in 2010 and her bachelor of science degree in business in 2012 from an online university. She reported no periods of unemployment dating back to at least 2001. She has no prior military or Federal Government service. This is her first application for a DoD security clearance, although she might have held a Confidential clearance in 2008 and 2009 while working on contracts for the Department of Homeland Security and the Federal Communications Commission.⁶

In her response to the SOR, Applicant admitted the truth of 14 of the 20 factual allegations set forth in the SOR. The total due on Applicant's 14 admitted delinquent debts alleged in the SOR, and supported by entries in the record credit bureau reports, is \$17,984. Applicant's admissions, including those made in response to DOHA interrogatories,⁷ are incorporated into the following findings of fact.

³Item 3.

⁴Item 4.

⁵The Government submitted 11 Items in support of the SOR allegations.

⁶Items 4 and 5.

⁷Items 6 and 7.

Applicant denied the \$588 debt alleged in SOR ¶ 1.c, claiming that it belonged to her sister. However, she submitted a dispute result from the credit bureau that reported the debt, which indicated that it had been investigated and would remain on her report.⁸ She claimed that she had paid the \$25 debt alleged in SOR ¶ 1.d on April 1, 2013, but the receipt for a \$27 charge on a credit card that she submitted as documentation was issued by a different creditor and account information does not match.⁹ She claimed to have settled the \$223 debt alleged in SOR ¶ 1.p by making an agreed payment of \$122 to the creditor on June 12, 2012. She did not document this claim, but the debt does not appear on later credit reports contained in Items 4 and 8.

Applicant's claims that the \$975 debts alleged in SOR ¶¶ 1.h and 1.o, as well as the \$746/\$745 debts alleged in SOR ¶¶ 1.i and 1.r, are duplicates could not be confirmed or disproved by the record evidence. Her claim that the \$382 debt alleged in SOR ¶ 1.q is a duplicate listing of the \$377 debt alleged in SOR ¶ 1.n is erroneous, since the Item 8 credit report identifies the former as a medical collection account and the latter as an electric bill. Even assuming the truth of her claims that two small debts were paid and that two other debts were alleged twice, record evidence proves 16 SOR-listed delinquent debts totaling \$18,984. Their balances range from \$94 to \$7,312, and they were incurred at various times from 2002 to 2011.¹⁰

Although not alleged in the SOR, Applicant submitted a voluntary petition for Chapter 7 bankruptcy relief in April 1999, and a final decree discharging her then-existing debts was issued in October 1999. She attributes her financial difficulties to having moved into her ex-boyfriend's house shortly before he lost his job, and their subsequent breakup in 2009, both of which left her supporting the family on a single income. Several of her delinquent debts predate 2006, however, and she did not specify what steps, if any, she took to responsibly minimize expenses.¹¹

Applicant said in her October 2011 SF 86 responses to financial questions that she planned to pay off all of her debts by March 2012 in order to purchase a home, and should be able to do so.¹² During her interview with an investigator from the Office of Personnel Management in November 2011, she said that she was working with a lender to have all her debts paid off in early 2012 so that she could purchase a home.¹³ She later said, in her January 2013 response to DOHA interrogatories, that she would pay off a number of still-delinquent SOR-listed debts by February 2013 with money from her

⁸Item 4 at 5, 7.

⁹Item 4 at 5, 8.

¹⁰Items 1, 4, 6, 8, 9, and 10.

¹¹Item 4; Item 5; Item 7.

¹²Item 5 at 35-39.

¹³Item 7 at 4-10.

income tax refund, and planned to resolve all of her debt within the next two years.¹⁴ In her response to the SOR, she said that she had resolved five other debts in 2012 that were not listed on the SOR, but provided no evidence of financial counseling and no budget or other plan to pay her delinquencies or stop incurring new ones.¹⁵

Applicant provided a letter from her supervisor describing her as, “conscientious, hard-working, and driven by process and quality.” Her supervisor further described her good initiative, dependability, pleasant kindness, and good communication skills.¹⁶ I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an

¹⁴Item 6 at 2-15.

¹⁵Item 4.

¹⁶Item 4 at 12.

applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s SOR-listed delinquent debts arose over the past 11 years, and remain largely unresolved. Her financial problems were not shown to have arisen from incidents beyond her control, and she chose not to repay most of those debts and continued incurring new ones despite steady employment throughout the time in question. She provided insufficient evidence of available income, or other assets, from which to satisfy these debts or to avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's multiple SOR-listed delinquent debts arose over the past 11 years, total about \$19,000, and continue to date. They arose after the Chapter 7 bankruptcy discharge of earlier debts in late 1999. They are frequent, recent, and arose under circumstances that involved Applicant's voluntary choices. She showed no capacity to avoid additional delinquent debt. The ongoing nature of these debts, and the recency of some, preclude a finding of unlikely recurrence. Applicant failed to demonstrate that her reliability, trustworthiness, and judgment have improved, and failed to resolve most of these debts (many of which were under \$650) even after their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). She blamed her ex-boyfriend's unemployment and their breakup for creating financial problems, but offered no evidence to corroborate that claim. Furthermore, many of the SOR-listed delinquencies are for debts incurred well before or after those dates. Finally, her minimal effort toward resolution of these debts while maintaining full-time employment is not responsible action under the circumstances.

Applicant offered no evidence of financial counseling, and did not establish clear indications that her financial issues are being resolved or are under control. She provided insufficient evidence to establish a good-faith effort to repay her overdue

creditors or otherwise resolve her debts, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore not supported on this record.

Applicant's attempt to dispute one debt with the credit bureau was not successful, and she offered no corroborating evidence of her assertion that it was her sister's debt. Accordingly, she failed to demonstrate mitigation under MC 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has worked to overcome many challenges in life, continued her education, and made an excellent impression on her supervisor. Her efforts have demonstrated significant potential to establish a record of personal and financial responsibility. She has expressed good intentions to do so.

However, Applicant is an accountable adult who is responsible for her voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her financial irresponsibility spans many years, and continues at present. It involves delinquent debts still totaling about \$19,000, toward which she had made minimal documented payments by the close of the record. She has not demonstrated the ability or willingness to fulfill her legal obligations to her creditors. She did not show that these debts arose under circumstances that were beyond her control, or that she initiated necessary changes to prevent additional financial difficulties. She offered insufficient evidence of financial counseling, rehabilitation, or responsible conduct in other areas of her life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e through 1.n:	Against Applicant
Subparagraphs 1.o and 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s and 1.t:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge