



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-11954

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

02/21/2014

Decision

HOWE, Philip S., Administrative Judge:

On October 27, 2012, Applicant submitted her electronic version of the Security Clearance Application (SF 86). On January 24, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on February 8, 2013. Applicant requested her case be decided on the written record in lieu of a hearing.

On November 20, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on November 21, 2013. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on December 2, 2013. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on January 2, 2014. I received the case assignment on February 3, 2014. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraphs 2.b, 2.c, 2.k, and 2.l, and admits the ten other allegations. (Items 2-6)

Applicant is 33 years old. She married an illegal immigrant in 2007 and remains married to him. He has a daughter from a prior marriage. Applicant has a child from her current marriage. She was on maternity leave until October 2012. Her husband came to the United States illegally when he was a teenager. He has resided in this country for about 20 years working in the construction industry. Applicant claims her husband applied for alien registration in the 1990s but was not successful due to the changing laws and regulations. He is currently unemployed. Applicant is the sole income in the family. (Items 1, 6-9)

Applicant has 13 delinquent debts totaling \$31,213. She has not made payments on any of these debts. (Items 1, 4, 6, 9-13)

Applicant owes \$177 on a medical account (Subparagraph 2.a). This debt dates from 2011. She admits this debt. She has not resolved it. (Items 1, 4, 6, 9-13)

Applicant owes \$318 on a telephone bill (Subparagraph 2.b). This debt originated in 2011. She denies this debt. However, Applicant's credit reports from February 2010, June 2012, November 2012, and November 2013 show the debt as due and owing. She admits in her statement attached to the financial interrogatories that none of her debts are paid. Therefore, Applicant owes the money. It is unresolved. (Items 1, 4, 6, 9-13)

Applicant denies owing a cable television provider \$439 (Subparagraph 2.c). This debt dates from 2011. However, Applicant's credit reports from February 2010, June 2012, November 2012, and November 2013 show the debt as due and owing. She admits in her statement attached to the financial interrogatories that none of her debts are paid. Therefore, Applicant owes the money. This debt is not resolved. (Items 1, 4, 6, 9-13)

Applicant owes \$468 on a store credit card (Subparagraph 2.d). She admits owing this money. This debt is unresolved. (Items 1, 4, 6, 9-13)

Applicant owes \$2,433 on a credit card debt (Subparagraph 2.e). She admits this debt. She has not resolved it. (Items 1, 4, 6, 9-13)

Applicant owes \$2,285 to a debt collector (Subparagraph 2.f). She admits this debt but has not paid it. It is unresolved. (Items 1, 4, 7, 9-13)

Applicant owes a credit card debt of \$5,139 to a debt collector (Subparagraph 2.g). This debt is not paid. Applicant admits this debt. This debt dates from 2008. It is unresolved. (Items 1, 4, 7, 9-13)

Applicant owes \$353 on a department store credit card that is being collected by a debt collection company (Subparagraph 2.h). She admits this debt. This debt is not paid. It dates from 2004. The debt is unresolved. (Items 1, 4, 7, 9-13)

Applicant owes \$2,103 to a medical provider since 2004 (Subparagraph 2.i). She admits this debt. She asserted in her interview with the government investigator that she has been paying him \$25 monthly since then but did not submit any documentary proof of such payments. This debt is unresolved. (Items 1, 4, 7, 9-13)

Applicant owes \$16,127 for a medical procedure done in 2004 (Subparagraph 2.j). Applicant did not have medical insurance at that time. The hospital wants her to pay the bill either in full or on a monthly basis as much as she can. Applicant denies having sufficient funds to pay this debt for the last 10 years because of other expenses and her husband's unemployment. She admits the debt but has not resolved it. (Items 1, 4, 7, 9-13)

Applicant owes \$325 to a cable television provider (Subparagraph 2.k). She denies owing this debt. Applicant denies having this provider and cannot find a record of her owing this debt. However, Applicant's credit reports from February 2010, June 2012, November 2012, and November 2013 show the debt as due and owing. She admits in her statement attached to the financial interrogatories that none of her debts are paid. Therefore, Applicant owes the money. It is unresolved. (Items 1, 4, 7, 9-13)

Applicant owes \$324 to a telephone company (Subparagraph 2.l). She denies owing this debt. However, Applicant's credit reports from February 2010, June 2012, November 2012, and November 2013 show the debt as due and owing. She admits in her statement attached to the financial interrogatories that none of her debts are paid. Therefore, Applicant owes the money. It is unresolved. (Items 1, 4, 7, 9-13)

Finally, Applicant admits owing a \$772 debt on a medical procedure (Subparagraph 2.m). However, she cannot recall the debt and was supposed to check its current status and arrange payment if the debt is valid. Applicant did not provide any documents to show she completed that work. The debt is owed and is unresolved. (Items 1, 4, 7, 9-13)

Applicant was unemployed in May to August 2005 and from September 2003 to January 2004. These periods without work usually occurred when she was in school to obtain job skills or training. (Items 1, 4, 7)

Applicant did not submit any documentation that she has participated in credit counseling or budget education. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. 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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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(c), the entire process is a conscientious scrutiny 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 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

A person who seeks access to classified information enters 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a

basis for exploitation or pressure by the foreign security or intelligence service or other group; and

(g) association with persons involved in criminal activity.

Applicant married an undocumented foreign national who has resided in the United States for at least 20 years. During that time he worked in the construction business. Applicant alleges her husband tried to obtain resident alien status but did not pursue his application because the U.S. immigration laws and regulations kept changing. Her action creates a vulnerability to exploitation, manipulation, or duress based on her husband's illegal immigration status. AG ¶ 16(e) applies.

Applicant's husband violated United States law by entering the country without legal permission. He has not obtained legal status in over the 20 years he has lived and worked in the United States. AG ¶ 20 (g) applies.

There are no mitigating conditions applicable to this type of personal conduct on the part of Applicant.

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

From 2004 to the present, Applicant accumulated 13 delinquent debts, totaling \$31,213 that remains unpaid or unresolved. Applicant did not submit any documents to show she made any effort to repay any of these debts. AG ¶ 19 (a) and ¶ 19 (c) apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

(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.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on her ability to repay her debts. In the past 12 years, Applicant has been unemployed eight months. Her medical procedure in 2004 resulted in two substantial debts. Applicant did not repay the debts in the past ten years, nor has she attempted to negotiate a settlement with the hospital, so she failed to act responsibly under these circumstances to resolve the debts in a timely fashion. She failed to meet her burden of proof on that issue.

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 facts and circumstances surrounding this case. Applicant married an illegal immigrant to the United States, who has been here for at least 20 years and is unemployed. She knew his immigration status when she married him. This conduct leaves her vulnerable to exploitation, coercion, or duress if she tries to get her husband legal status in the United States. Stated another way, she could disclose classified documents to assist her husband in obtain legal status in the United States.

Applicant was an adult when she incurred the debts. She has not taken any action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Her inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments or show proof of any installment agreements to pay any of her delinquent debts during at least the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns under the guideline for Personal Conduct. She also did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a to 2.m:	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.

PHILIP S. HOWE
Administrative Judge