



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 14-00474
)
Applicant for Security Clearance)

Appearances

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

11/05/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 21, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 effective within the DOD for SORs issued after September 1, 2006.

In Applicant’s undated answer to the SOR, she elected to have her case decided on the written record. On June 24, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on August 13, 2014, and it was received on August 18, 2014. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional information. The case was assigned to me on November 3, 2014.

Findings of Fact

Applicant admitted all the allegations in the SOR except ¶¶ 1.b and 1.ff. She disputes the amount alleged in SOR ¶ 1.x and states the debts in SOR ¶¶ 1.d and 1.m; ¶¶ 1.q and 1.r; and ¶¶ 1.w and 1.ee are duplicate debts. These admissions are considered findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. She is a college graduate. She was married from 1997 to 2008. She has three children ages 23, 20, and 16. She has been employed with a federal contractor since 2009.

The SOR alleges 33 delinquent debts totaling more than \$182,000. Applicant admitted she owed all the debts, except the debts in SOR ¶ 1.b (\$534) and 1.ff (\$777). She indicated in her answer that she partially paid the judgment in SOR ¶ 1.f (\$3,320), but did not provide any proof. She admitted the debt in SOR ¶ 1.m (\$7,425), but believes it is a duplicate with ¶ 1.d (\$3,933). She did not provide proof they are the same debt. She admitted the debt in SOR ¶ 1.q (\$587), but believes it is a duplicate with ¶ 1.r (\$584). The debts are to the same creditor, but have different account numbers. She indicated she had paid \$90 toward the debts. She did not provide proof of payment or that they are the same debt. She admitted the debt in SOR ¶ 1.w (\$22,045), but believes it is a duplicate with ¶ 1.ee (\$14,178). She did not provide proof they are the same debt. She admitted she owes the debt in SOR ¶ 1.x (\$1,573), but disputes the amount owed. She did not provide any proof of what she believes she owes.

Of the 33 debts alleged, seven are judgments (¶¶ 1.a (\$3,300), 1.b (\$534), 1.c (\$250), 1.d (\$3,933), 1.e (\$164), 1.f (\$3,320), 1.g (\$648)). Four are federal tax liens (¶¶ 1.h (\$15,224), 1.i (\$921), 1.j (\$737), and 1.k (\$737)). Two debts are vehicle repossessions (¶¶ 1.l (\$10,487) and 1.t (\$461)). The remaining alleged debts are accounts for credit cards, utilities, telecommunications, medical and various other consumer debts. SOR ¶ 1.dd (\$41,494) is a federal student loan debt. Applicant stated the loan was deferred, but did not provide any proof.¹

Applicant was arrested in 2011 on a warrant for an unpaid dental bill. She posted bail, appeared in court, and established a payment plan to satisfy the debt (SOR ¶ 1.hh). She did not provide proof of the payment plan or her compliance. She stated the debt was paid, but did not provide proof.

Applicant attributed her financial problems to her 2008 divorce, her husband's failure to pay their children's medical bills, and her failed business. She opened a

¹ Items 3, 5, 6, 7.

daycare center in 2005 that closed in 2009. She failed to pay sufficient federal employee taxes during that period, and as a result owed more than \$17,000 to the Internal Revenue Service. As part of the business, she obtained a loan that she defaulted on and a company vehicle that was repossessed.² In 2011, Applicant signed a lease for a retail space with the intention of opening another daycare center. It is unknown why she was unable to open the daycare center. The lessor wanted her to pay the full term of her lease, even though she never moved into the space. The account was placed for collection (SOR ¶ 1.v (\$46,232)).³

Applicant listed in her security clearance application that she had periods of unemployment from September 2008 to August 2009 and September 2006 to August 2007. It is unclear why she believed she was unemployed while she was running her daycare business from 2005 to 2009.⁴

In her answer to the SOR, Applicant did not provide any explanation, documentation, or evidence for actions she has taken to resolve her financial problems.⁵

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 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 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

² Items 4, 9.

³ Items 5, 6, 7.

⁴ Item 4.

⁵ Item 3.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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 notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

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

Applicant has 33 delinquent debts totaling more than \$182,000. She admitted almost all of the debts. She was arrested for failing to pay a debt and stated she arranged a payment plan. Her debts accumulated over several years, and she has not resolved them. I find the above disqualifying conditions apply to these facts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

(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.

In her answer to the SOR, Applicant stated she made payment arrangements for the debt in SOR ¶ 1.hh. She did not provide any documents to support her statement. She failed to provide sufficient proof or evidence regarding any of the delinquent debts she believed she paid, disputed, or believed were duplicates. She did not provide sufficient evidence that she has resolved any of the delinquent debts. The debts are recent and unpaid. AG ¶ 20(a) does not apply because Applicant's debts are still owed. Under the circumstances, I cannot find future financial problems are unlikely to recur and that it does not cast doubt on her reliability, trustworthiness, and good judgment. There is some indication that Applicant's divorce in 2008 and failed business in 2009 contributed to her financial problems. However, without more specific information about her finances during this period, I am unable to conclude her financial problems were beyond her control. She did not provide information as to what actions she is taking to resolve her financial problems. AG ¶ 20(b) does not apply.

There is no evidence that Applicant received financial counseling. There are no clear indications that her financial problem is being resolved or is under control. There is insufficient evidence she made a good-faith effort to repay her overdue creditors or otherwise resolve her debts. AG ¶¶ 20(c) and 20(d) do not apply. Applicant stated she made payment arrangements to pay the debt in SOR ¶ 1.hh, and she had paid or disputed amounts on other debts. She failed to provide documentation to substantiate her dispute or evidence of actions to resolve the issue. AG ¶ 20(e) does not apply.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 40 years old. She has been employed by the same employer since 2009. She owes approximately \$182,000 for unpaid judgments, tax liens, and other consumer debts. She did not provide sufficient mitigating evidence to conclude the security concerns regarding her finances are resolved. Applicant failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

Formal Findings

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

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.hh: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge