



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



In the matter of:)
)
) ISCR Case No. 14-01175
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

10/23/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On May 8, 2014, the Department of Defense (DOD) issued 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 (AG) effective within the DOD on September 1, 2006.

On June 11, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

September 10, 2014. I convened the hearing as scheduled, by video teleconference, on October 1, 2014.

The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through K, which were admitted into evidence without objection. The record was held open until October 10, 2014, to allow Applicant an opportunity to submit additional documents. She submitted AE L through O, which were admitted without objection.¹ DOHA received the hearing transcript (Tr.) on October 9, 2014.

Procedural issues

Department Counsel moved to withdraw SOR ¶¶ 1.g, 1.k, 1.n, 1.q, and 1.u as duplicate allegations. Applicant did not object, and the motion was granted.²

Findings of Fact

Applicant admitted ¶¶ 1.a, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.l, 1.m, 1.o, 1.p, 1.r, 1.s, 1.t, 1.v-1.z, and 1.aa-1.ee of the SOR and denied the remaining allegations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. She is a high school graduate. She has worked for her current employer or its subcontractor since April 2013. She was married from 1986 to 1997 and from 2003 to 2009, but was separated from her husband in 2007. She remarried in 2009. She became the guardian of her two nieces in 2004. She did not receive any child support from either of the parents. She did receive a year of government assistance for the children. The children are now ages 22 and 20.³

During Hurricane Katrina in 2005, Applicant's home was damaged, and she lost her personal property. She received compensation from the Federal Emergency Management Agency and started over. In 2007, she separated from her husband and their divorce was finalized in 2009. As part of the property settlement, after the refinancing of their house, she received \$10,000 over a period of about six months.⁴

From 2007 to 2009, Applicant experienced some health problems. In 2007, 2009, and 2013 her husband had heart attacks, along with other medical issues. In 2011, Applicant experienced more medical problems. Although her husband was eligible to obtain medical insurance through his employer, they felt it was cost prohibitive, and they

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 14.

³ Tr. 30-31, 88-91.

⁴ Tr. 31-32, 41-43; AE J.

did not have medical insurance. She was self-employed from May 2011 until she began work with her current employer in April 2013. She worked from April 2011 to November 2011 as a home care provider. From September 2010 to May 2011, she worked for a communications company. She was unemployed from May 2010 to September 2010. From July 2005 to May 2010, Applicant was a regional manager for a telecommunications company and chose to leave to stay home with her family.⁵

In 2011, Applicant and her husband moved in with his parents. Her husband continued to have medical problems in 2012. During the same year, they borrowed money from Applicant's father-in-law to pay some bills. Her father-in-law obtained a \$10,000 loan from his credit union that was given to Applicant and her husband to make payments on a truck loan. The balance on the loan is \$3,765. He also authorized them to use his credit card that had a \$10,000 limit. The balance owed on the credit card is \$6,137. Applicant and her husband have been making monthly payments of \$500 to repay him for the two debts.⁶

The SOR alleges medical debts in ¶¶ 1.e (\$12,906), 1.f (\$2,648), 1.h (\$1,171), 1.i (\$976), 1.j (\$931), 1.l (\$699), 1.m (\$600), 1.o (\$510), 1.p (\$495), 1.r (\$432), 1.s (\$388), 1.t (\$365), 1.v (\$334), 1.w (\$335), 1.x (\$200), 1.y (\$151), 1.z (\$111), 1.aa (\$96), 1.bb (\$80), 1.dd (\$58), and 1.ee (\$32), totaling approximately \$23,518. Applicant does not dispute she owes the alleged debts. She would like to pay them, but is unable. During Applicant's background investigation she stated that she intended on contacting certain creditors and establishing payment plans with them. She also indicated that she intended to make payments to other creditors. She intended to make credit inquiries about the validity of some of the alleged debts, and if the debts were valid she intended to pay them. At her hearing, Applicant stated that she contacted the credit bureau about some debts, but did not contact any of the creditors. She confirmed she did not follow up on what she said she intended to do about the delinquent debts. Applicant stated that the debt in SOR ¶ 1.aa is paid. She believed some of the SOR debts in ¶¶ 1.bb through 1.ee were paid, but did not identify specifically which ones. She did not provide proof of payment for any of the debts in SOR ¶¶ 1.aa through 1.ee.⁷

Applicant provided proof that the tax lien debt in SOR ¶ 1.a belonged to her ex-husband, and it was satisfied.⁸ The debt in SOR ¶ 1.b (\$557) was a joint checking account Applicant held with her ex-husband that was charged off in approximately 2006 or 2007. The amount delinquent was for an overdraft. She understood from her ex-husband that it was paid. She did not provide any documents to support the status of the debt. Applicant is unaware what the debt in SOR ¶ 1.c (\$361) is for. She has not researched its origin. The debt in SOR ¶ 1.d (\$252) is an unpaid utility bill. Applicant

⁵ Tr. 32, 36-41, 86-88; GE 1.

⁶ Tr. 77-79; AE M.

⁷ Tr. 44-48, 57-62, 65-66; GE 2. Applicant's delinquent debts are confirmed in GE 3.

⁸ AE G, H.

explained she moved and did not receive the final bill. It remains unpaid. The debt in SOR ¶ 1.cc (\$67) is for a company telephone bill from when she was employed with the company in 2011. She indicated in her background investigation statement that she intended to pay this debt. It remains unpaid.⁹

Applicant stated she and her husband contacted the creditor of the debt in SOR ¶ 1.m, and they made a \$50 payment toward the debt. They intend to make monthly payments of \$50. The debt has been owed since 2008. She explained some of the medical debts have been consolidated and this payment is for the aggregate amount. She believed SOR ¶¶ 1.f, 1.h, and 1.i pertain to the creditor they made the \$50 payment to. She did not provide proof of the payment or any additional payments. She provided documents to show she is making a payment to a collection agency on a debt that is not alleged in the SOR. She believed that the debt was originally \$1,100, and she started making payments in June 2014 and has paid \$600.¹⁰ She also provided documents to show she paid some small debts that became delinquent in 2013 and were paid in August 2014.¹¹ These debts were also not alleged in the SOR.¹²

Applicant provided copies of her husband's pay stub to show a payment of \$470 is being deducted from his pay each month. She indicated that this payment is being applied to an outstanding medical bill. It is unclear if it is part of any of the medical bills alleged in the SOR. In addition, there is another deduction each month to repay a student loan. Their Federal income tax refund is also applied to the balance.¹³

Applicant stated that she earned approximately \$25,000 in annual income in 2010 to 2011. She quit the job due to medical reasons. She earned approximately \$15,000 from April 2013 to April 2014. Her current annual salary is projected to be approximately \$20,000. Her husband earned approximately \$44,000 in gross pay since 2009, except when he was unemployed from 2010 to 2012. Applicant works about four to five hours of overtime each week.¹⁴

Applicant and her husband have health care savings accounts that they contribute \$10 a month to, and it is matched by their employer. Their employers also

⁹ Tr. 52-57, 62-65; GE 2.

¹⁰ Tr. 49-52, 57-61, 82-83; AE A.

¹¹ AE C, D, E.

¹² Tr. 66-69. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered the debts that were not alleged in the SOR for these limited purposes.

¹³ Tr. 84-85, 95; AE N.

¹⁴ Tr. 69-77; AE N, O.

provide them \$250 each to spend on medical care. They both contribute 3% of their salary to a 401K retirement account. Applicant estimated their household has approximately \$327 remaining in expendable income each month after they pay their expenses and make the \$500 payment to her father-in-law. She has one credit card with a \$300 balance. She has been paying her car loan on time. She and her husband have negligible money in a savings account. They do not provide support to any family members. Applicant stated that she will pay what she is able to pay on her delinquent debts. She stated that for the last year and a half she is trying to live within her means. She indicated that she has a good-faith intention to pay her bills. Applicant purchased a 2012 Camaro in May 2014 for \$18,000.¹⁵

Applicant's supervisor testified on her behalf. She is rated as "exceeds expectations," which is the top grade. This is based on an employee's attendance, ethics, work performance, and productivity. She described Applicant as a great asset to the team, who does her work timely and in an ethical manner. Applicant's work is considered outstanding.¹⁶

Applicant also provided a character letter. In it she is described as reliable and trustworthy. She is a person who has integrity and is responsible. She is dedicated to her family and work.¹⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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

¹⁵ Tr. 66, 76-80, 92-96; AE B, N, O.

¹⁶ Tr. 100-109.

¹⁷ AE K.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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 all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has numerous delinquent debts totaling more than \$23,000 that are unpaid. Applicant is unable or unwilling to satisfy her debts. She began accumulating delinquent debt in 2007. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

The debt in SOR ¶ 1.a is satisfied. The debt in SOR ¶ 1.b Applicant attributes to a joint account she held with her ex-husband. The debt is not resolved. Applicant has not resolved the remaining delinquent debts, and they remain owed. Due to her fragile financial situation, I cannot conclude that her financial problems are unlikely to recur and do not cast doubt on her current reliability. AG ¶ 20(a) is not established.

Applicant and her husband had serious medical issues and most, but not all, of their delinquent debts are for medical accounts. They chose not to have medical insurance because it was too expensive. She was unemployed or underemployed for a period of time. Applicant was caring for her two nieces and did not receive child support. She received government assistance for about a year. In 2005, her home was damaged and she lost her personal items due to Hurricane Katrina. These conditions negatively impacted her finances and were beyond her control. In order to fully apply AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She received a \$10,000 property settlement from her ex-husband in 2009. She and her husband are

repaying her father-in-law for a loan and a credit card debt with a combined balance of approximately \$9,900. Applicant stated she intends to pay her debts, but she does not have the resources to do so. It is undisputed that she has had traumatic events affect her finances over the past ten years. Although Applicant appears to be unable to pay her delinquent debts, she has not made an effort to verify debts she questioned or work out any type of payment plan even with creditors of small debts. She recently purchased a new car for \$18,000. I find AG ¶ 20(b) only partially applies.

Of the 30 delinquent debts 26 are for medical accounts. Despite her statement that she intended to pay some of the small debts, she was either unable or unwilling to do so. She has not contacted the creditors to discuss a payment plan. Regarding debts she had questions about, she did not follow through to confirm the validity of the debts. She stated she made a payment to one creditor and another debt was resolved, but she did not provide proof of the payment. She and her husband are repaying his father for a loan and a credit card they used. She stated that she is making payments on another delinquent debt that was not alleged. She testified she also made payments on more recent delinquent debts. There was no evidence presented that Applicant has had financial counseling. Applicant stated she intends to pay her creditors what she can. The evidence does not support that she has the resources to resolve her delinquent debts. She does not have a viable plan for how she will resolve her delinquent debts. Despite her best intentions, she has not established any type of repayment track record. She has no savings and has \$327 remaining each month. There are not clear indications her financial problems are under control at this time or that she has made a good-faith effort to pay or otherwise resolve her delinquent debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant failed to provide a reasonable basis to dispute the legitimacy of the debts she disputes. She did not provide documented proof to substantiate the basis of her dispute or provide evidence of actions she has taken 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 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 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 a valued team member to her employer. She began experiencing financial problems in 2009 when she and her husband had medical problems and no health insurance. They also experienced periods of unemployment. Her financial problems were beyond her control, but despite her good intentions, Applicant is unable at this time to pay delinquent debts. Her finances remain fragile. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h-1.j:	Against Applicant
Subparagraph 1.k:	Withdrawn
Subparagraphs 1.l-1.m:	Against Applicant
Subparagraph 1.n:	Withdrawn
Subparagraphs 1.o-1.p:	Against Applicant
Subparagraph 1.q:	Withdrawn
Subparagraphs 1.r-1.t:	Against Applicant
Subparagraph 1.u:	Withdrawn
Subparagraphs 1.v-1.ee:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge