



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



In the matter of:)
)
) ISCR Case No. 07-06205
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

April 22, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant owes approximately \$19,000 on delinquent debts. She is paying only one of her 15 delinquent debts. In August 2006, she failed to list her delinquent debts when she completed a Questionnaire for National Security Position. Applicant did not mitigate the financial considerations or personal conduct concerns. Clearance is denied.

Applicant contests the Defense Department's intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,² the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on October 28, 2007, detailing security concerns under finances and personal conduct.

¹ Applicant's last name was misspelled in the Statement of Reasons (SOR).

² 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On December 27, 2007, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated January 16, 2008. Applicant's response to the FORM was due on March 1, 2008, 30 days after receipt of a copy of the FORM. No response had been received. On April 7, 2008, I was assigned the case.

Findings of Fact

In her Answer to the SOR, Applicant denied the debt listed in SOR ¶ 1.c of the SOR. She admitted the remaining factual allegations, with explanations.

Applicant is a 36-year-old shipping and receiving clerk who has worked for a defense contractor since April 2006, and is seeking to obtain a security clearance. From August 1994 through January 2005, Applicant was an enlisted member in the United States Air Force. (Item 4) Applicant chose to accept a buy out from the Air Force. After leaving the Air Force she had a series of jobs including being a waitress. She had periods of unemployment and the jobs she did have were sufficient to pay her living expenses but not additional debts. (Item 3) Her employment was paying her \$1,000 per month less than her Air Force salary. (Item 5)

Applicant states the debt amount owed in SOR ¶ 1.c is now \$169.53. She has contacted the collection agency listed in SOR ¶ 1.d about the \$2,050 debt and is attempting to work out a repayment plan. She has contacted the creditors listed in SOR ¶ ¶ 1.c and 1.i and they have no documentation relating to the \$123 and \$140 debts. The fifteen debts alleged in the SOR total approximately \$19,000.

Applicant owed the Defense Account and Finance Service (DFAS) \$5,999 (SOR ¶ 1.g) due to a government overpayment. (SOR ¶ 1.g) She indicates \$120.25 is paid each week from her pay, that \$4,033.34 has been repaid, and the debt will be paid in full the first week of May 2008. (Item 3) Once the government overpayment has been repaid, Applicant intends to start paying the other debts. Applicant has recently purchased a home and intends at some future date to use the equity in her house to pay any remaining debts.

In August 2006, Applicant completed a Questionnaire for National Security Positions, Standard Form (SF) 86. She answered "no" to question 28 a asking if she had ever been more than 180 days delinquent on any debt, and to question 28 b asking if she was currently more than 90 days delinquent on any debt. (Item 4)

In October 2006, she was interviewed concerning her finances. She stated she completed the security form twice and thought she had listed her debts on one of the forms. She also stated she did not think her debts were 90 or 120 days overdue when she completed the forms. She stated she was not trying to conceal her financial problems. (Item 5) In her response to the SOR, Applicant said she was so consumed with shame concerning her financial situation that she failed to disclose her debts. (Item

3) She said she was not proud of the state of her finances or her failure to disclose the debts.

In the October 2006 interview, Applicant said she did not recognize some of the debts listed on her credit report. She stated she would look into a number of the accounts and with some debts would contact the creditor to establish a repayment plan. (Item 5) She indicated she had a job in supply management through a temp company from March 2005 until January 2006. (Item 4, 5) When the job ended she used her credit cards for living expenses. (Item 5) Following the loss of that job in January 2006, other than repaying the government, she has made no payments on her debts. (Item 5)

In May 2007, Applicant answered written interrogatories (Item 5) about her finances. As of October 2006, Applicant was earning \$14.79 per hour, which was a gross income of \$615 per week. Her income after deductions was \$408. (Item 5) In June 2007, Applicant had a job promotion and a 70% pay raise to \$25.11 per hour. She was expecting another pay raise in October 2007. (Item 5)

In December 2006, Applicant had to purchase a vehicle when her vehicle experienced engine trouble. (Item 5) This unexpected event had an impact on her finances.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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. 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, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant 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 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.

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

Under Guideline F for financial considerations a security concern typically exists due to significant unpaid debts. 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.³

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Financial considerations become a security concern when a person has significant delinquent debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly safeguarding and

³ Revised adjudicative guidelines (AG) ¶ 18.

handling classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owes approximately \$19,000 on 15 debts. Disqualifying conditions AG¶ 19(a) "inability or unwillingness to satisfy debts" and AG¶ 19(c) "a history of not meeting financial obligations," apply.

In January 2005, Applicant's monthly income was greatly reduced when she left the Air Force. She had a series of low paying job before securing her current job. Her income paid her living expenses, but was insufficient for payment on her other debts. Other than repayment on her government debt, Applicant has not paid any of the other 14 debts. Even though interviewed about her delinquent debts in October 2006, answering financial interrogatories in July 2007, and receiving the SOR in October 2007, five months ago, she had not made a single payment on any of her other debts.

Mitigating condition AG¶ 20(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, has limited applicability. After leaving the Air Force her income was greatly reduced, but this was not an unexpected event since she chose to accept a buyout. Additionally, she has been gainfully employed since April 2006 and has made payment on only one debt. Applicant has not acted reasonably under the circumstances. Her income may have been limited, but she should have been able to establish a repayment plan with some of the creditors.

Fourteen of the debts remain unpaid. Mitigating conditions 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, does not apply. The debts in question went unpaid starting in 2005, they are numerous, and did not incurred under unusual circumstances.

There is no evidence Applicant has sought financial counseling or demonstrated a positive change in her financial management. It is not clear the problem is being resolved or under control. AG¶ 20 (c) "the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control," does not apply nor does AG¶ 20 (d) "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" except for the repayment of the government debt.

For AG¶ 20 (d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling her debts is needed, which is not present here. Applicant is making payment on her government debt and in May 2008, after this debt has been paid, she intends to

start paying her other delinquent debts. This may or may not occur. There is no repayment plan other than her statement that she will pay the debts.

Applicant has made few efforts to resolve the delinquent indebtedness and has not made any real progress in addressing her debts. Given these circumstances, in light of the unaddressed delinquent debts, her efforts do not amount to a good-faith effort within the meaning of the guideline.

Guideline E, Personal Conduct

Under Guideline E, personal conduct, the concern is 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 ¶ 15.

In August 2006, when completing her SF 86, Applicant intentionally failed to list her delinquent debts in response to question 28. Due to the nature of her debts Applicant should have disclosed them. AG ¶ 16 (a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" applies.

During her October 2006 interview, she indicated she thought she had put the debts on one of the forms she completed and also said she did not believe the debts were delinquent. If she did not believe her debts were delinquent she would have had no reason to list them on the form. I find her response to the SOR to be more credible. She states she was ashamed about her financial situations and failed to disclose her debts.

Additionally, AG ¶ 16(a) a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities, applies.

None of the mitigating conditions apply to her false answers. She did not make a prompt, good-faith effort to correct the falsification before being confronted by the facts, the concealment was not caused or significantly contributed to by improper or inadequate advice, or so much time has passed, or the behavior was so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

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) 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.

Applicant is 36 years old and sufficiently mature to make prudent decisions about her finances. She is paying her government obligation. After it is paid, she will start paying her other debts. Although her intent to resolve her financial problems appears to be genuine, she has done little to demonstrate that intent. What is missing is: (1) a realistic and workable plan to address her financial problems, (2) documented actions taken in furtherance of the plan, and (3) a measurable improvement in the situation. Given the current circumstances, it is likely that the financial problems will continue. Additionally, she should have given truthful answers on her SF 86 when asked about her finances.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise suitably addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations security concern. Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole-person concept was given due consideration and that analysis does not support a favorable decision.

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

 Subparagraph 1.a-1f: Against Applicant

 Subparagraph 1.g: For Applicant

 Subparagraph 1.h-1o: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

 Subparagraph 2.a: Against Applicant

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.

CLAUDE R. HEINY II
Administrative Judge