



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-01211
)
)
Applicant for Security Clearance)

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

September 16, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On September 24, 2007, Applicant submitted a Standard Form 86 Security Clearance Application (SF 86). On May 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 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.

Applicant answered the SOR in writing on June 6, 2008, and requested a hearing. DOHA initially assigned the case to another administrative judge and on July 2,

2008, reassigned it to me. On July 15, 2008, DOHA issued a Notice of Hearing and the case was heard on July 29, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Exhibits (AE) A through G into evidence without objection. At the conclusion of the hearing, I left the record open until August 14, 2008, to give Applicant an opportunity to submit additional information. On that day, Applicant submitted eight exhibits that were marked as AE H through O, and admitted into the record without objection by the Government. On August 22, 2008, she submitted additional exhibits that I incorporated into AE J and AE M without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on August 15, 2008.

Findings of Fact

In her Answer to the SOR, Applicant admitted all allegations, except those contained in ¶¶ 1a, 1.b and 1.m. Her admissions are incorporated into the following findings of fact:

Applicant is 59 years old and unmarried. From 1969 to 1988, she taught elementary education. In 1989, she began a position with Electronic Data Systems where she worked until September 1999 when she was required to retire. In 2000, she withdrew \$30,000 from her Individual Retirement Account (IRA) and used credit cards for living expenses. (Tr. 44).

Over the course of the next four years, Applicant had several low paying retail jobs, including a courier job she started in early spring of 2002. In October 2003, she found another position as a technical writer and earned a \$44,000 salary. She was in that position until December 2005 when she was laid off. She then collected unemployment compensation for a couple months before finding another retail position at \$10.50 per hour. In July 2007, she obtained her current position as a technical writer for a federal contractor. Her annual salary is \$41,000. (GE 1; Tr. 50).

Applicant attributes her financial problems to periods of under-employment and some unemployment after her retirement. She believes the current tax liabilities are for the years 2000 and 2001, and include the taxes that arose subsequent to the withdrawal of monies from her retirement fund, in addition to penalties and interest for the last several years.¹ (Tr. 84-85). After she retired, she sought financial counseling to learn if there were steps she could take to live frugally and manage her finances. (Tr. 75). In March 2008, she completed a set of Financial Interrogatories regarding her delinquent debts. She also prepared a budget with the assistance of a debt consolidation company with which she was working to repay one debt. According to that budget, her net monthly income was \$2,400 and expenses were \$1,939, leaving \$565 available for debt repayment. (GE 2). While testifying, she indicated that her net monthly

¹In 2000, she had a tax liability of \$5,276, of which \$3,000 is related to her retirement withdrawal. There is no evidence indicating what Applicant's tax liability was for 2001, a year in which she was unemployed.

income is \$2,400, and her expenses are about \$2,000, leaving a remainder of \$400. She submitted a budget, post-hearing, listing her expenses as \$2,680, excluding taxes, health insurance and a 401(k) contribution, and including \$300 for debt repayment and a \$400 payment to her attorney. Based on that budget, it appears that her expenses exceed her income by \$280. (AE O).

The SOR alleges 16 debts, totaling \$262,000, several of which are duplicates, and includes an \$113,740 foreclosure. The status of those debts is as follows:

1. SOR ¶ 1. a alleges a \$598 tax lien filed by the Internal Revenue Service (IRS) on February 12, 2007. (GE 4). The year of the tax liability appears to be 2006. She presented an April 2008 letter to the IRS requesting that her refund for 2007 be applied to her tax liability for 2006. (AE H). On June 4, 2008, Applicant hired a lawyer to resolve all tax matters alleged in the SOR. (AE F; Tr. 53). It remains unresolved.
2. SOR ¶ 1. b alleges a \$598 tax lien filed by the IRS on March 12, 2007. It does not appear to be a duplicate of the above, as it has a different identification number. (GE 4). It is unresolved.
3. SOR ¶ 1.c alleges a \$42,742 tax lien filed by the IRS on September 10, 2007. (GE 3). It is unresolved.
4. SOR ¶ 1.d alleges another \$42,742 tax lien filed by the IRS on September 12, 2007, and has a different serial number from the one filed on September 10, 2007. (GE 3). It is unresolved.
5. SOR ¶ 1.e alleges a \$3,431 debt owed to a credit card company. As of March 2008, she began paying \$69 monthly per a debt repayment plan. (GE 2; Tr. 55).
6. SOR ¶ 1.f alleges a \$117 debt owed to a collection agency for a telephone bill. After contacting the creditor on August 7, 2008, she learned that this debt and the following debt are the same. She intended to mail a \$418 payment on August 31, 2008, to resolve this debt. (AE N).
7. SOR ¶ 1.g alleges a \$441 debt owed to a telephone company as mentioned above. She is resolving it with a \$418 payment. (AE N).
8. SOR ¶ 1.h alleges a \$5,020 debt owed on an automobile loan. She will resolve it after the tax matters are cleared up. (Tr. 58). It remains unresolved.
9. SOR ¶ 1.i alleges a \$9,177 debt owed to a creditor. The balance on the account is \$16,048. (AE J). She previously paid on the account from April 2004 to December 2005, until she lost her job. (Tr. 26). This is the same debt alleged in SOR ¶ 1.o, as identified by the same account numbers. (Tr. 61;

GE 5 at 10 & 12). She telephoned the law firm handling the account and requested written confirmation that this debt is a duplicate of the one alleged in SOR ¶ 1.o. (AE J). She paid \$200 on June 1, 2008, to the firm handling the account. (AE G). This account is being resolved.

10. SOR ¶ 1.j alleges a \$47 debt owed to a creditor. Applicant telephoned the creditor on August 6, 2008, and confirmed that is the same debt alleged in SOR ¶ 1.l and ¶ 1.n. She paid it on August 19, 2008. (AE M).
11. SOR ¶ 1.k alleges a \$21,065 debt owed to a collection agency. It is the same debt alleged in SOR ¶ 1.p. (AE L). It is unresolved.
12. SOR ¶ 1.l alleges a \$119 debt. It is the same debt alleged in SOR ¶ 1.j and ¶ 1.n. This debt was paid on August 19, 2008. (AE M).
13. SOR ¶ 1.m alleges an \$113,740 debt for a mortgage on her former residence that went into foreclosure in 2003. Applicant stated this was resolved upon the sale of her house. (Tr. 29; AE K). An October 2007 CBR confirms that. It states, "Foreclosure redeemed; Status: closed." (GE 5). However, an April 2008 CRB, lists the account as open. (GE 4). Based on her testimony, and the October 2007 CBR, this debt appears to be resolved.²
14. SOR ¶ 1.n. alleges a \$56 debt. This is the same debt alleged in SOR ¶ 1.j and ¶ 1.l. It is paid. (AE M).
15. SOR ¶ 1.o alleges a \$10,510 debt owed to a credit card company. This is the same debt alleged in SOR ¶ 1.i as identified by the account numbers in a CBR. (Tr. 61; GE 5 at 10 & 12). She paid \$200 on this account in June 2008.
16. SOR ¶ 1.p alleges an \$11,411 debt owed to a credit card company. It is a duplicate of the debt alleged in SOR ¶ 1.k. (AE L). It remains unresolved.

In summary, all of the debts listed above, except two, are being addressed, but not necessarily resolved. Applicant hired a lawyer in June 2008 to handle the four tax liens, listed in ¶¶ 1.a through 1.d. They remain unresolved. She resolved her mortgage, listed in ¶ 1.m. She is paying two debts, one alleged in ¶ 1.e, and another listed in both ¶ 1.i and ¶ 1.o. At the end of August 2008, she was going to pay the debt listed in ¶ 1. f and ¶ 1.g. She paid one debt listed in ¶ 1.j, ¶ 1.l, and ¶ 1.n. The \$5,020 debt alleged in ¶ 1.h, and a debt alleged under both ¶ 1.k for \$21,065 and ¶ 1.p for \$11,411 are unresolved.

² There is no evidence that the mortgage company sought a judgment against Applicant for unpaid monies.

Applicant was very candid and credible during her presentation. She operates on a very tight budget. She no longer uses credit cards, but instead relies on a debit card. (Tr. 81).

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 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. 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 and the applicant 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 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."

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.

AG ¶ 19 describes two conditions that could raise a security concern and maybe be disqualifying in this case:

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

Applicant began accumulating a significant amount of delinquent debt after she retired and withdrew \$30,000 from her IRA in 2000, and began using credit cards for living expenses. Those debts continued to accrue through 2001, and included the foreclosure on her home in 2003. Many of the debts remain unresolved. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 includes six conditions that could mitigate security concerns arising from 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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial problems arose in 2000 and continue into 2008. Because the problems have been ongoing for almost eight years, AG ¶ 20(a) cannot apply. AG ¶ 20(b) has some application. Applicant's debts began accumulating as a result of several years of under-employment and a short period of unemployment. Those circumstances were outside of her control. She did not present any substantive evidence that she attempted to manage the debts during those difficult periods or subsequent to them. Thus, I find this potentially mitigating condition has limited application.

Applicant presented evidence that she obtained credit counseling in 2000. She has resolved several debts and is trying to resolve other debts. Based on her recently submitted budget, it is not clear that her monthly income can accommodate her monthly expenses and indicates that her financial obligations are not yet under control, as required under AG ¶ 20(c). Hence, this mitigating condition has limited application.

Applicant sought professional assistance for the resolution of the four tax liens, alleged in ¶¶ 1.a through 1.d of the SOR. However, she has no knowledge of the current status of those liens since employing the lawyer in June. She resolved the mortgage allegation. She paid one debt, and intended to pay another debt at the end of August (which I believe she would have done). She is making monthly payments on two debts. I conclude AG ¶ 20(d) should be given some consideration for her good-faith efforts to resolve the debts alleged in SOR ¶¶ 1.e, 1.f and 1.g, 1.i and 1.o, 1.m, and 1.j, 1.l, and 1.n.

The evidence does not support the application of AG ¶ 20(e) and AG ¶ 20(f).

“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). They include the following:

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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. Applicant is a 59-year-old woman with a long work history, who started experiencing financial difficulties in 2000 after she retired and decided to withdraw monies from her retirement funds and use credit cards for living expenses. She then remained unemployed for about two years before finding employment. She then held, for periods of time, low paying jobs outside of her expertise, further exacerbating her financial problems. Prior to 2000, she had not experienced financial difficulties.

Applicant credibly acknowledged her debts and expressed a desire to resolve them. However, she did not take steps to address the majority of the debts until the last month or so, despite learning in March 2008 that the Government had concerns about her financial obligations. After receiving the May 2008 SOR, she called a lawyer in June 2008 to investigate her unpaid taxes from 2000 and 2001. As of the hearing date, she did not have any information as to the status of the liens. While all of her recent efforts are having a positive effect in resolving her outstanding obligations, the fact that she waited several years to address them, in particular her taxes, raises questions about her judgment and reliability. At this time, there is at least \$43,000 in unpaid taxes and \$16,000 to \$26,000 of unresolved credit card debt. The Appeal Board noted in ISCR Case No. 06-12930, "that an applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken 'significant actions to implement that plan.' ISCR Case No.04-09684 at 2-3 (App. Bd. Jul.6, 2006)." In this case, Applicant has not yet established a plan to resolve all of her debts that have been known to her and outstanding for several years. For these reasons, I am concerned that similar financial problems will recur in the future.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under 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 through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge