



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



In the matter of:)
)
) ISCR Case No. 08-05087
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: *Pro Se.*

March 17, 2009

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.

On November 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F. 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 December 22, 2008, and requested a hearing before an administrative judge. The case was assigned to me on February 10, 2009. DOHA issued a notice of hearing on February 11, 2009. I convened the hearing as scheduled on March 4, 2009. The government offered Exhibits (GE) 1 through 4 Applicant did not object and they were admitted. Applicant testified and offered Exhibits

(AE) A through B. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on April 13, 2009.

Findings of Fact

Applicant admitted allegations 1.d and 1.i of the SOR and denied the remaining allegations. Her admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 50-year-old senior software consultant who has been employed by a federal contractor since late 2007. Applicant served in the Air Force from 1979 to 1990. She was discharged with an Honorable Discharge under General Conditions. She went to two Uniform Code of Military Justice (UCMJ) Article 15 hearings while in the Air Force the last one for writing two bad checks.¹ Applicant has worked for different employers since her discharge and has experienced two short periods of unemployment, one for two months and another for three months. Applicant is not married and is a college graduate with a degree in business management and communications.²

Applicant worked in the insurance industry from 1995 to 1999. Her income was linked to commissions. The industry experienced changes and her income decreased. She left this job and moved to the telecommunications industry from 1999 to 2000. In 1999, Applicant filed for bankruptcy and had approximately \$25,000 to \$30,000 in debt discharged.³

The delinquent debt in SOR ¶ 1.a is a cell telephone bill (\$606). Applicant stated that in 2005 she requested her account be terminated because she was dissatisfied with the service. She admitted she canceled the account prior to the end of the contract and there was a termination fee. She was not aware of the fee being waived. She has been aware of the bill since receiving the SOR and has not contacted the creditor to resolve it.⁴

The delinquent debt in SOR ¶ 1.b is a medical bill (\$41). Applicant stated she contacted the creditor and they did not have an account listed for her. She stated she filed a dispute with the credit bureau and it has been removed from her credit report.

¹ I have not considered Applicant's discharge or Article 15 hearings for disqualifying purposes, but have considered it when analyzing the whole person and her history of financial problems. Applicant was not completely candid when first asked about her discharge from the Air Force and the circumstances of her Article 15 hearings.

² Tr. 19-29.

³ Tr. 24, 29-31.

⁴ Tr. 31-34.

However, the debt remains on two credit bureau reports from 2008.⁵ Applicant did not provide a copy of the credit report she was referring to, nor did she provide any documentation to substantiate her dispute.⁶

The delinquent debt in SOR ¶ 1.c is to a cable company (\$339). Applicant acknowledges she did not return the cable box to the company when she moved two years ago. She has the cable box in her storage unit in another state. She stated she will return it when she accesses her storage unit. The debt is not paid.⁷

In 2006 Applicant used a tax preparer service to prepare and file her 2005 income taxes. It was determined that she was due a refund of \$5,165. Applicant elected to receive a “rapid refund” whereby the preparer gave Applicant the amount of the refund immediately, less a fee, so she did not have to wait for the refund through the Internal Revenue Service (IRS). This “rapid refund” is basically a loan until she receives the refund from the IRS. Applicant took the “rapid refund” and paid some bills and spent it on other items. When she received her refund from the IRS the amount was approximately \$800. When questioned about the large difference, Applicant testified that the IRS garnished part of her refund to pay for back taxes that were owed from 2004. Applicant has not repaid the loan she received from the “rapid refund.” She has known of the delinquent debt in SOR ¶ 1.d since 2006. In answers to interrogatories from July 16, 2008, about this delinquent debt she stated: “I am making arrangements to make payments on this account. These payments will start on 1 Aug 2008-\$150 will be paid monthly until it is paid or I have the ability to pay it off.”⁸ Applicant never made arrangements to pay it off and never made any monthly payments on this debt. She stated she was irresponsible.⁹

Applicant admitted that she failed to file her 2003 income taxes on time. She eventually filed them in 2006 and paid them along with the associated penalties and interest. She stated she did not believe she had to file her taxes in 2003 because she had a low income.¹⁰

Applicant stated she paid the debt listed in SOR ¶ 1.e (credit card/collection, \$2,608) to the original creditor in 2001. She did not provide any documented proof of payment or that she formally disputed the account with the credit bureau. She did not

⁵ GE 2 page 1; GE 3 page 8.

⁶ Tr. 34-36.

⁷ Tr. 36-37.

⁸ GE 4.

⁹ Tr. 37-43.

¹⁰ Tr. 43-45. I will not consider this information for disqualifying purposes, but will consider it when analyzing Applicant past financial problems and her total financial situation. I will also consider it when analyzing the whole person.

contact the creditor or collection agency to verify the debt or attempt to resolve her dispute.¹¹

The debt in SOR ¶ 1.f (Auto repossession, \$12,378) was for a car Applicant bought and later voluntarily had it repossessed. Applicant accepted and settled the debt for approximately \$3,100.¹²

Applicant disputed the debt in SOR ¶ 1.g (personal loan, \$1,036). She stated it was paid in 2000. Applicant did not provide any documented proof of payment or proof she contacted the creditor or credit bureau and formally disputed the debt.¹³

Applicant disputed the debt in SOR ¶ 1.h (department store/collection, \$885). She stated she disputed the account with the creditor in the past and the creditor does not have an account in her name. She also testified she did not contact the collection agency or the creditor since receiving the SOR to validate the debt or resolve the issue.¹⁴

I did not find Applicant credible or believable when testifying about paying some of her debts or that she contacted the creditors in the past. Applicant provided a personal financial statement. She listed she has \$938 expendable income each month after paying her expenses. She maintains a \$59 monthly account for a membership to a massage business and a \$35 monthly account for magazine subscriptions. She has approximately \$500 in savings and has no other investments. Applicant failed to list additional monthly expenses for a storage unit (\$150); car insurance on a second car that she loans to another person (\$75); and dog grooming (\$65). She stated she pays her current monthly expenses on time.¹⁵

Applicant has not had any financial counseling.¹⁶

Applicant provided her annual performance review from her employer. In the review she provided self-assessment comments. She stated: "I will be working to increase my attention to deadlines and completing all required documents and actions in a timely manner, especially since this will greatly affect the other individuals that must provide input to these documents and actions." Her supervisor recognizes Applicant as

¹¹ Tr. 46-49.

¹² Tr. 50-53; GE 4 at page 9; AE B.

¹³ Tr. 54-58.

¹⁴ Tr. 58-59.

¹⁵ Tr. 60; GE 4 at page 3.

¹⁶ Tr. 63-74.

a leader, a manager, and a team player and recommended her for promotion. She is considered smart and talented.¹⁷

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.

¹⁷ AE A.

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 all of them and especially considered AG ¶ 19

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

Applicant has numerous delinquent debts that she has not paid. She was aware of the debts before receiving her SOR. Since receiving the SOR she has taken little if any action on most of the debts. She made promises to resolve some of the debts, but failed to follow through. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered 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 individual 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.

Applicant has debts that are unpaid and unresolved and therefore current. Despite her promises to pay certain debts she failed to follow through on paying them. She has been aware of the debts and has failed to contact the creditors she claimed she paid to dispute and resolve the claims. I find (a) does not apply because some of her delinquent debts have not been resolved and cast doubt on her reliability, trustworthiness and good judgment. Applicant had short periods of unemployment and underemployment and these conditions were beyond her control. However, these conditions can not be viewed in a vacuum and it must be determined if Applicant acted responsibly under the circumstances. Applicant has been aware of the security concerns regarding her delinquent debts and has not taken action to resolve them. In instances where she claimed she paid the debt, she did not provide documented proof and in some cases she failed to contact the creditor to dispute the debt. I find (b) only partially applies. Applicant has not received financial counseling. Due to her failure to address her outstanding debts and contact creditors I find there are no clear indications that the problem is under control. Hence, I can not apply (c). Applicant has paid one large debt, however others remain with little or no effort made to resolve them. Applicant disputed many debts claiming they were paid, but failed to document her disputes or provide proof of payment. She terminated a contract and was aware of a termination fee, but never addressed or challenged the debt. She has in her possession a cable box, but failed to return it or pay for it. She received a tax “rapid refund” and never repaid the money she owed because her refund was applied to back taxes. I find (d) partially applies because she resolved one large debt. I find (e) does not apply because Applicant failed to provide any substantiation that she paid or resolved the remaining delinquent debts and they are in dispute.

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 common sense 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 has a fine work record. Her company and supervisor think highly of her. Applicant also has a history of financial problems. She had delinquent debts discharged in bankruptcy in 1999 and had a clean financial record. Unfortunately she again accumulated debts that are delinquent and unpaid. She claimed she paid some of her debts or disputed them, but provided no documented proof. She failed to contact creditors listed in the SOR to dispute some of her debts. She acknowledged owing some of the debts, but has not paid them. Overall, the record evidence leaves me with serious 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 from 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.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraphs 1.f-1.i: | Against Applicant |

Conclusion

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

Carol G. Ricciardello
Administrative Judge