



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



In the matter of:)
)
) ISCR Case No. 08-05584
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Department Counsel
For Applicant: *Pro Se*

February 17, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant has nine unpaid debts totaling approximately \$35,000, which are in collection or have been charged off. Applicant has failed to rebut or mitigate the government’s financial considerations security concerns. Clearance is denied.

Statement of the Case

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,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on September 17, 2008, detailing security concerns under financial considerations.

On October 9, 2008, 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 November 13, 2008. The FORM contained six attachments. On November 18, 2008, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Applicant's response was due 30 days after receipt of a copy of the FORM. Applicant's response was due on December 18, 2008. As of January 15, 2009, no response had been received. On January 16, 2009, I was assigned the case.

Findings of Fact

In her Answer to the SOR, Applicant denied the factual allegations of the \$19,742 bank credit card debt listed in SOR ¶ 1.c. She admitted the remaining eight debts, which total approximately \$15,000.

Applicant is a 51-year-old senior technician who has worked for a defense contractor since June 2007, and is seeking to maintain a secret security clearance. Applicant was granted a secret clearance in January 1985 and a confidential clearance in January 1980. (Item 4, p 21-22, Item 5, p 5)

In her Answer to the SOR, Applicant stated she had contacted a credit company to help her with credit consolidation. Applicant states her financial difficulties were the result of being overextended when she was laid off from work. Applicant was unemployed from January 2001 through October 2001, January 2005 through April 2005, and April 2007 through June 2007. (Item 5, p 3 and Item 4, p 5 – 10) In her SOR response, she did not indicate to which period of unemployment she was referring. Applicant stated she has “had bad credit for years while holding a clearance and it never affected my integrity.”

Applicant has the following unpaid debts: a \$303 collection agency debt (SOR ¶ 1.a), a \$5,365 collection agency debt (SOR ¶ 1.b), a \$7,454 bank credit card debt (SOR ¶ 1.d), a \$266 collection agency debt collection for a telephone debt (SOR ¶ 1.e), a \$490 telephone debt (SOR ¶ 1.f), a \$753 bank credit card debt (SOR ¶ 1.g), a \$240 clothing store credit card debt (SOR ¶ 1.h), and a \$340 telephone debt (SOR ¶ 1.i.).

Applicant denied a \$19,742 bank credit card debt (SOR ¶ 1.c). On Applicant's June 2008 credit report, this debt is listed as a charged off account with a balance of \$19,742. (Item 5, p 9) In Applicant's October 2007 interview, Applicant asserts the original debt was her father's credit card debt. Her father died and her mother suffered from Alzheimer's disease. Applicant had the debt put in her name and arranged to pay \$150 per month on it. Payments stopped in early 2006 when Applicant's work hours

were reduced. (Item 5, p 26) Applicant asserts she hired an attorney to address this debt. Applicant provided no documentation related to the dispute of this debt or action by her attorney.

In the mid-1990s, Applicant obtained a \$3,000 loan for moving expenses. (SOR ¶ 1.b) In early 2005, she stopped payments on this debt when she was unemployed for a few months. In 2002, Applicant had a clothing company credit card (SOR ¶ 1.h), with a \$100 limit. She stopped making payments in early 2005. In 2000, she opened two bank credit cards with \$300 limits. (SOR ¶ 1.g) In 2005, she stopped making payments on these cards when her work hours were cut from 48 to 32 hours per week. (Item 5, p 22)

Applicant had two telephone debts. She knows nothing about the \$340 telephone debt (SOR ¶ 1.i). In 2004, she changed telephone service providers and was unable to pay the final bill due to being out of work on disability for 4 or 5 weeks. In 2006, Applicant opened a credit card account with a \$300 limit. (SOR ¶ 1.b) She used the card for gasoline and car repairs.

In April 2005, she obtained a job with 40 hours per week plus eight hours per week of overtime. Shortly after she started, her hours were reduced to 32 per week with no overtime. Additionally, the plant where she worked would periodically shut down for two weeks at a time with no pay to the employees. In October 2006, she was out of work on disability for five or six weeks following back surgery. In April 2007, she was laid off due to company consolidation and her branch plant being closed.

In June 2007, she obtained her current job. In June 2008, Applicant asserts she was paying \$100 each month to pay a \$1,490 bank debt, which is not a debt of concern listed in the SOR. (Item 5, p 20) In October 2007, Applicant asserted she hoped to have a payment plan in place by the end of 2007 to address her financial problems. (Item 5, p 24)

As of October 2007, Applicant's gross monthly income was approximately \$3,000 and her monthly expenses were \$2,000. After paying her debts, Applicant's net remainder was approximately \$400. (Item 5, p 6) She has no credit cards.

In Applicant's October 2008 SOR response, she asserts she was addressing her debts in the wrong way by addressing one bill at a time. She acknowledges she should have sought help with her credit problems earlier. She stated she had contacted a company to assist her with her credit and to establish a plan to address her financial problems. No documentation concerning assistance provided by this company was presented.

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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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.

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 holding 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.

Applicant's history of delinquent debt is documented in her credit report, her interview by an Office of Personnel Management (OPM) investigator, her SOR response, and her response to interrogatories. Applicant has admitted responsibility for all but one of her delinquent debts. She disputes owing a debt of approximately \$20,000 stating it was her father's debt that she assumed. She hired an attorney to dispute this debt, but provided no corroboration of this dispute. She has provided insufficient documentation to show significant progress resolving any of her debts. There is no documentation that even the four smallest debts, which are each less than \$350, have been paid or addressed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and did not occur under circumstances not likely to recur. She failed to demonstrate that her debts were largely due to circumstances beyond her control, or that she has acted responsibly in addressing her debts. Further, she has not sought credit counseling, or otherwise brought the problem under control as her circumstances permitted.

AG ¶ 20(b) has limited applicability since Applicant has experienced periods of unemployment. However, she has had stable employment since June 2007 and even the four smallest debts have yet to be paid. Additionally, Applicant failed to show how these periods of unemployment impacted her current finances.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid none of the nine debts listed in the SOR. The total amount of unpaid debt is approximately \$35,000. She was making \$150 per month on debt not listed in the SOR. In October 2008, she stated she had contacted a credit company to establish a plan to address her financial problems. This assertion is tempered by her October 2007 statement that she hoped to have a repayment plan established by the end of 2007. She has had hopes of addressing her debts before, but has not been able to follow through with payment. The desire to pay one's debts is important as it arranging a repayment plan to address past due obligations. But it is also important that payment actually be made on the debts.

Applicant assumed her father's \$19,742 credit card debt. (SOR ¶ 1.c) She made monthly payments on the debt until early 2006. She asserts she has hired an attorney to dispute this debt, but provided no documentation or other corroboration. Under AG ¶ 20(e) "documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue" must be provided. Applicant has failed to do this.

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. The debts are not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Also, the money was not spent frivolously, nor incurred on luxuries. However, the debts remain unpaid. Applicant asserts she will establish a repayment plan, but she made a similar claim in October 2007, and was unable to follow through with payment. There is nothing in the record to indicate that this time she will be able to follow through and actually make the payments.

Based on the totality of the evidence available in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. She has not taken effective action to resolve her debts, and has not equipped herself to avoid financial problems in the future.

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 addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

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, financial considerations: **AGAINST APPLICANT**

Subparagraph 1.a – 1.i: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge

