



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



In the matter of:

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) ISCR Case No. 08-05657
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Applicant for Security Clearance

Appearances

For Government: Brandon Murphy, Department Counsel
For Applicant: *Pro Se*

March 31, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant had ten delinquent accounts totaling approximately \$94,000. She is making payments on three debts totaling approximately \$6,000. The remaining debts have not been paid nor has any repayment arrangement been made. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. 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)

Statement of Reasons (SOR) on August 26, 2008, detailing security concerns under financial considerations.

On September 22, 2008, Applicant answered the SOR, and requested a hearing. On December 15, 2008, I was assigned the case. On December 22, 2008, DOHA issued a notice of hearing scheduling the hearing held on January 13, 2009. The government offered Exhibits (Ex.) 1 through 3, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A and B, which were admitted into evidence. The record was kept open for one week to allow Applicant to supplement the record. (Tr. 43) No additional information or documentation was received. On January 26, 2009, the transcript (Tr.) was received.

Findings of Fact

In her Answer to the SOR, Applicant admits the factual allegations in the SOR. Applicant is a 39-year-old who works in administrative support who has worked for a defense contractor since October 2007. She is seeking to obtain a security clearance. Co-workers, supervisors, and associates state Applicant is a respected, trustworthy, responsible person who can be counted on. (Ex. B)

Applicant was working full time for a government job and working part time with a title insurance company. (Tr. 56) Applicant's commute to her government job was four hours, two hours each way. (Tr. 57) In January 2005, Applicant went to work full time with the title company. (Tr. 29) From July 2006 through January 2007, Applicant was unemployed and received \$340 weekly unemployment compensation. She obtained a job, which involved a pay cut from her employment prior to the period of unemployment. In October 2007, she obtained her current job and "started making a great deal more." (Ex 3, page 4)

During and after her unemployment, Applicant was overpaid \$519 by the state employment commission. Her state tax refund was intercepted to pay a portion of the debt. (Tr. 41) She hoped to pay off the remaining debt (\$120) shortly after the hearing. No documentation showing payment was provided. Her proposed budget lists a \$25 per month payment for this debt now handled by a collection agency. (Ex. A)

In 2003, Applicant had a lapse in medical insurance when she was between employers and had some medical problems. (Tr. 34) The medical bills were paid and incorporated along with other bills in a bank debt (\$17,145) listed in SOR ¶1.a. She has not heard from this creditor in a long time. The last time they talked, she attempted to make a repayment arrangement but the amount of monthly payment she proposed was unacceptable to the creditor. (Tr. 34)

In 2006, Applicant moved into her home and used credit cards to make purchases. (Tr. 40) In April 2006, Applicant signed a credit union loan for a pickup truck. Applicant was the maker of the loan and not merely a co-signer. (Tr. 46) Another person was supposed to make the monthly payments. The other individual fell behind by Christmas 2006. The truck was repossessed in July 2007. (Tr. 45)

Applicant established a signature loan / line of credit that she used for five or six years. She owes \$24,000 on this debt (SOR ¶1.h). Since December 2007, Applicant has been making \$125 payment each pay period on the store debt (\$4,972) listed in SOR ¶1.d. (Ex. 3) Since February 2008, she has been making \$100 monthly payments on the store debt (\$1,097) listed in SOR ¶1.g. (Ex. 3)

In May 2007, Applicant talked with a bankruptcy attorney, but has not retained the attorney. (Tr. 27, 51) Currently, she does not wish to pursue bankruptcy. In November 2007, Applicant contacted a debt consolidation company and was told they could not help her with a monthly payment she could afford. The debt consolidation company suggested Applicant seek bankruptcy protection.

Applicant does not live extravagantly or elaborately. (Tr. 28) Applicant's yearly income is \$54,000. (Tr. 30) Her monthly income after taxes is \$2,900. Her disposable income (take home income less monthly expenses) is \$332.50 (Ex. A) She has no credit cards. (Tr. 40) Her 2002 Toyota automobile is paid. (Tr. 53) She has not received any credit counseling. (Tr. 52) Her only financial obligation not listed on the SOR is a \$380 medical bill on which she makes regular payments. (Tr. 54) She is not receiving calls from creditors. (Tr. 58)

A summary of the debts follows:

	Creditor	Amount	Current Status
a	Bank credit card and line of credit used to consolidate bills including medical bills.	\$17,145	Unpaid. In 2007, Applicant did contacted creditor in an attempt to establish a repayment plan.
B	Credit card charged off.	\$13,923	Unpaid. No action taken. Applicant has not heard from them for some time. (Tr. 35)
C	Credit card charged off.	\$13,595	Unpaid. No action taken. Applicant has not heard from them for some time.
d	Store MasterCard.	\$4,972	Paying. Applicant has been making \$125 payments per pay period since December 2007. Balance is approximately \$3,800.
e	Store credit card.	\$2,551	Unpaid. Applicant last talked with them two weeks ago in an attempt to set up a repayment agreement. Creditor wanted a

			higher monthly payment than Applicant could afford. (Tr. 38) Debt is now with a collection agency. Applicant hopes to use her tax refund to pay part or all of this debt.
f	Bank credit card.	\$595	Unpaid. Now with a collection agency. Applicant last contact with them was summer 2008. (Tr. 38)
g	Department store.	\$1,097	Paying. Applicant has been making \$50 payments each pay period since February 2008. Creditor offered a lump-sum pay off, but Applicant has had insufficient funds to accept the offer. (Tr. 39)
h	State employment commission.	\$519	Applicant's tax refund was intercepted and applied to this debt. Current balance is \$120.
i	Federal Credit Union. Repossession of a pick up truck.	\$15,494	Unpaid. Applicant has taken no action related to this debt.
j	County credit union Signature loan/ line of credit to pay off bills.	\$24,155	Unpaid. Applicant has taken no action related to this debt.
	Total debt listed in SOR	\$94,046	

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 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.” 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.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant had ten delinquent accounts which totaled approximately \$94,000. Throughout this process, she had admitted responsibility for the delinquent debts. She is making monthly payment on three of the accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

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.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by a period of unemployment. In October 2007, she obtained her current job. The majority of the debts remain unpaid, they are not infrequent, did not happen long ago, and did not occur under unusual circumstances. AG ¶ 20(a) does not apply.

AG ¶ 20(b) has some applicability. Under AG ¶ 20(b), Applicant experience a six month period of unemployment following by a period of underemployment ending in

October 2007, when she obtained her current job. Since October 2007, she has made payments on three of the SOR debts and is making monthly payments on a fourth debt not listed in the SOR. These debts total approximately \$6,000. Debts totaling approximately \$88,000 are not being paid.

Applicant has received no financial counseling. There is no clear indication that the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant has an agreement paying \$125 each pay period on the store debt (\$4,972) listed in SOR ¶1.d. (Ex. 3), \$100 monthly payments on the store debt (\$1,097) listed in SOR ¶1.g., and \$25 monthly payments on the overpayment of unemployment compensation debt (balance \$120) listed in SOR ¶1.h. AG ¶ 20(d) applies to these three debts since a good-faith effort is being made to pay these debts.

AG ¶ 20(e) does not apply because Applicant does not dispute any of the debts.

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. Applicant incurred approximately \$54,000 in credit card or line of credit debt. She incurred a \$15,000 credit union debt when she purchased a pickup truck for another. She has learned not to co-sign for others. She owes another credit union approximately \$24,000. She has talked with the creditors, but except for the three debts previously listed, Applicant has not paid any of her other obligations. She would like to pay all her debts but has only \$300 in disposable monthly income.

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. If Applicant should be afforded an opportunity to reapply for a security clearance in the future, and she has paid or is paying 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.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her 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, financial considerations: FOR APPLICANT

Subparagraph 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e – 1.f:	Against Applicant
Subparagraph 1.g – 1.h:	For Applicant
Subparagraph 1.i – 1. j:	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