



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



In the matter of:

ISCR Case No. 08-06730

Applicant for Security Clearance

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant completed and signed a Security Clearance Application (SF 86) on August 10, 2004. On December 17, 2007, she completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP). On January 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 and elected to have a hearing before an administrative judge. Applicant's answer to the SOR was misdated February 14, 2008. Her answer to the SOR was received by DOHA on February 23, 2009. The case was assigned to me on April 2, 2009.

On April 8, 2009, Department Counsel contacted Applicant and proposed a hearing date of April 29, 2009. Applicant agreed conditionally to the hearing date, pending her employer's consent. On April 13, 2009, Applicant left a telephone message for Department Counsel agreeing to the April 29, 2009 hearing date. On April 20, 2009, DOHA issued a notice of hearing for the April 29, 2009 hearing. I convened the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, I discussed with Applicant ¶ E3.1.8. of the Directive, which states that an Applicant shall be notified at least 15 days in advance of the time and place of an industrial security case hearing. Applicant acknowledged receiving actual notice of the hearing date on April 13, 2009, and she expressed her willingness to proceed with the hearing as scheduled. She also stated that she waived the 15-day notice provision of ¶ E3.1.8. of the Directive.

The Government called no witnesses and introduced 12 exhibits, which were marked Ex. 1 through 12 and admitted to the record without objection. Applicant testified on her own behalf and called no witnesses. She introduced 16 exhibits, which were marked as Exs. A through E, and Exs. 1. a, 1.c, 1.e, 1.f, 1.j, 1.m, 1.q, 1.r, 1.s, 1.u, and 1.v. All of Applicant's exhibits were admitted to the record without objection.

At the conclusion of the hearing, I left the record open until close of business on May 6, 2009, so that Applicant could, if she wished, provide additional information for the record. Applicant timely filed one additional exhibit on April 30, 2009, and this exhibit was marked Ex. PH-1 and admitted to the record without objection. On May 5, 2009, she filed four additional exhibits, which were marked Exs. PH-2, PH-3, PH-4, and PH-5. Department Counsel did not object to Applicant's post-hearing submissions, and they were admitted to the record. DOHA received the transcript (Tr.) of the hearing on May 7, 2009.

Findings of Fact

The SOR contains 22 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.v.) In her Answer to the SOR, Applicant admitted 20 of the 22 allegations (SOR ¶¶ 1.a., 1.b., 1.d. through 1.m., and 1.o. through 1.v.) She denied the SOR allegation at ¶ 1.c., and she stated she had paid the debt alleged at SOR ¶ 1.n. Applicant's admissions are included herein as findings of fact.

Applicant is 29 years old. She has never been married and has no dependents. She completed high school and attended college full-time for two years in 2000 and

2001. She was unemployed for approximately ten months in 2003 and 2004. She is currently employed by a federal contractor and seeks a security clearance. Her annual salary is approximately \$54,000. (Ex. 1; Ex. 12; Tr. 62-64, 75-77, 120, 127.)

Applicant completed an SF-86 in August 2004. In response to questions on the SF-86 about her financial record, Applicant reported an unpaid judgment of \$1,189, dating from 2001. She said she was unsure whether she owed other judgments, and she reported that in the past seven years she had been over 180 days delinquent in paying two state student loans and two federal education loans. The loans totaled approximately \$19,452. (Ex. 12.)

Applicant was interviewed by an authorized investigator in May 2005. She acknowledged that as of that time, she had made no payments on her state and federal student loans. She reported that her wages had been garnished to satisfy a judgment resulting from an unpaid credit card debt dating to 2001. She also provided a financial statement showing that she had contracted with a credit management firm to pay her creditors on her behalf in order to settle approximately \$10,000 in existing debts. She agreed to pay the credit management firm \$250 a month for 32 months to satisfy the debts. Applicant paid the credit management firm for four months. She then stopped paying the firm because she didn't believe it was allocating enough money from her monthly payments to settle her debts and satisfy her creditors. (Ex. 11; Tr. 113-114.)

Applicant completed an e-QIP in December 2007. In response to questions on the e-QIP about her financial record, she reported that she was making monthly payments to a creditor on a \$10,000 debt resulting from an automobile repossession in March 2005. She stated that her wages had been garnished to pay the judgment resulting from her credit card debt dating to 2001, and the debt had been satisfied in 2005. Additionally, she reported she owed \$3,000 in delinquent student loans. (Ex. 1.)

On August 20, 2008, Applicant sent the following letter to DOHA:

I . . . have joined a credit debt management company to resolve all delinquent credit issues. The judgments for \$12,269 and \$10,685 are for the same company and I have attached the garnishment paperwork for that issue. The judgment for 897.00 has been paid and the payment is attached as well. Also the issue for \$365 has been paid as well. All other debts are being handled thru the counseling company. Some of the debts [X and Y] collection agencies are out of business and are being disputed by my debt management representation. I am working on my credit thru this agency and appreciate the opportunity to be considered for my top secret clearance. I am working toward making improvements in my money management decisions. As of October 1st I am also moving in with a friend to help minimize my monthly expenses [sic] to focus on paying off all my debt. Thank[s] again for your consideration in this matter.

(Ex. 9.)

In her response to the SOR, signed February 14, 2009, Applicant admitted 20 of the 22 financial delinquencies alleged by DOHA. Attached to her answer was a document from a credit management firm, dated February 14, 2009, requesting verification of past due derogatory items on Applicant's credit report as a prerequisite to processing her application for a consolidated debt payment plan. In response, Applicant provided a document she had filed with the creditor holding her automobile debt of over \$18,000. In the document, dated February 20, 2009, Applicant requested a 60 day deferment of her monthly payment to the automobile creditor for financial hardship.¹ (Ex. A; Ex. B; Ex. 2; Tr. 108-109.)

At her hearing, Applicant acknowledged that the credit management firm did not approve her application for a consolidated debt payment plan because she lacked the financial resources to pay her debts, which were substantial. Applicant further reported that her roommate paid her portion of their monthly rent for three months so that Applicant could use her rent money to pay her debts. Applicant acknowledged that she will repay her roommate at a later date. (Tr. 89, 114-115.)

At her hearing and in documents she filed after her hearing, Applicant provided information on the status of the debts alleged on the SOR. Her wages are being garnished to satisfy the judgment alleged at SOR ¶ 1.a. As of April 17, 2009, Applicant owed approximately \$11,010, which included a judgment principal of \$9,371, attorney's fees of \$1,534, and court costs of \$105. (Ex. 1a; Tr. 36-37, 79-81.)

On May 5, 2009, Applicant satisfied the \$394 judgment alleged at SOR ¶ 1.b. (Ex. PH-2; Ex. PH-3; Ex. PH-4; Tr. 83-84.)

Applicant initially denied knowledge of the debt alleged at SOR ¶ 1.c. At her hearing, she provided documentation to show she made a \$484 credit card payment to the creditor identified at SOR ¶ 1.c. (Ex. 1c; Ex. E; Ex. PH-1; Tr. 47, 83-84.)

Applicant provided a receipt to document that she had settled the medical debt of \$163 alleged at SOR ¶ 1.d. and the medical debt of \$280 alleged at SOR ¶ 1.e. for \$354.70, and the creditor considered the debts satisfied in full. (Ex. 1e.) She provided a receipt and a checking account transaction, dated April 29, 2009, to establish that she had paid \$216 to the creditor for the debt alleged at SOR ¶ 1.f. (Ex. 1f; Ex. PH-4; Tr. 88-89).

At her hearing, Applicant stated she had not paid the debt alleged at SOR ¶ 1.g. and was seeking more information to identify the creditor. She stated she had paid the medical debts identified at SOR ¶¶ 1.h. and 1.i. on April 27, 2009. In a post-hearing document, she provided evidence she had made a combined payment of \$454 to satisfy

¹ Applicant's credit bureau report of January 2, 2009, shows a past due amount of \$1,640 on her automobile loan. The past due amount on Applicant's automobile loan was not alleged on the SOR. (Ex. 2.)

the two debts and the amounts were deducted from her checking account on April 29, 2009. (Ex. PH-4; Tr. 90-93.)

Applicant admitted she had defaulted on three separate debts to companies providing cell phone services. One cell phone debt was alleged at SOR ¶ 1.j. She offered documentation to corroborate her statement that she had authorized payment of the debt of \$250.78 on April 23, 2009. She stated she was attempting to obtain more information on the debt alleged at SOR ¶ 1.l., and the debt was not yet satisfied. (Ex. 1 j; Tr. 93-97.)

The SOR alleged at ¶1.m. that Applicant owed a delinquent cell phone debt of \$201.22. She provided documentation to corroborate her statement that the debt had been satisfied by a debit card payment. Applicant provided documentation to corroborate her statement that she had paid the debt alleged at SOR ¶ 1.n on June 27, 2008. (Ex. 1m; Ex. 10 at 12; Tr. 96-99.)

Applicant owed a delinquent debt of \$1,335 to a bank. This debt, in collection status, was identified at SOR ¶ 1.o. At her hearing, Applicant acknowledged she had an account with the bank in 2005 or 2006, but she had not been able to identify the nature of the debt, and she had not paid it. As a post-hearing submission, Applicant submitted a statement, dated May 5, 2009, from the creditor stating the account had been satisfied in full, contingent upon clearance of her payment. She provided a payment confirmation number, which could not be corroborated by other information she supplied. (Ex. PH-2; Ex. PH-4; Ex. PH-5; Tr. 100-103.)

Applicant acknowledged joining a recreation facility and incurring a debt, alleged at SOR ¶ 1.p., for \$1,234. She stated she had settled the debt for \$678 on April 23, 2009. Her bank statement shows a payment for \$676.88 to a creditor not specifically identified as the creditor in SOR ¶ 1.p. (Ex. PH-1; Tr. 103-105.)

Applicant was responsible for a number of traffic tickets. Three such obligations were alleged at SOR ¶¶ 1.q., 1.r., and 1.s. Applicant provided documents to corroborate her statements that she had paid overdue traffic tickets. Department Counsel stipulated that she had paid the specific traffic violations alleged in the SOR. (Ex. 1.q; Ex. 1.r; 1.s.; Tr. 48-55.)

Applicant acknowledged a debt of \$265, alleged at SOR ¶ 1.t., to a medical provider. She stated she had not yet paid the debt but would do so on Friday, May 1, 2009. She failed to provide evidence of payment in her post-hearing submissions. (Tr. 106-107.)

Applicant owed a debt, alleged at SOR ¶ 1.u., to an insurance company. She provided documentation to corroborate her statement that she had authorized payment of the debt on April 27, 2009 for \$375.23, which included the original debt of \$365.28, plus fees. (Ex. 1.u; Tr. 56-57.)

Applicant asserted she had paid the student loan debt identified at SOR ¶ 1.k. She was unable to establish whether the debt was a state or federal student loan, and she did not provide documentation to corroborate her statement that the debt had been satisfied. Applicant also acknowledged she had owed over \$9,000 in student loans to the state college she last attended in 2001. This debt was alleged at SOR ¶ 1.v. Applicant reported that her state of residence had withheld money from her state income tax refunds twice to satisfy the delinquent student debts, thus reducing the amount she owed to \$5,400. In April 2009, approximately two weeks before her hearing, she entered into a payment agreement to satisfy the remaining balance on her state student loan debt. She agreed to make monthly payments of \$250 for 20 months to satisfy the debt. (Ex. 1.v; Tr. 57-58, 65-74.)

Applicant inquired about credit counseling and planned to attend a credit counseling course in May 2009. She had not yet filed her federal income tax returns for tax years 2006 and 2007. She filed her federal income tax return for tax year 2008 and received a refund of \$8,000, which she used, in part, to pay her financial delinquencies. She attributed her long history of financial delinquencies to poor planning, immaturity, and irresponsibility in her youth. Applicant stated she had worked hard to pay her debts in order to qualify for a security clearance. (Tr. 61-62, 115-120, 141-142.)

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, the administrative judge applies these guidelines 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

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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt since at least 2004 and was unable to pay her creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c)) or the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d))

Applicant's financial delinquencies were long-standing. When she answered the SOR in February 2009, she admitted 20 of the 22 financial delinquencies alleged. She stated she had an arrangement with a debt management company to consolidate her debts and pay them over time. At her hearing she acknowledged that, because of her poor credit, the debt management company had not approved her application for consolidated payment of her delinquencies.

Applicant was unemployed for ten months between 2003 and 2004. She has no dependents, has been steadily employed since 2004, and reported an annual income of \$54,000. She has not yet received consumer credit counseling. In the weeks before her hearing, she took action to pay or settle many of her financial delinquencies. She provided financial records to show she had paid or settled many of her debts. Some of the funds she used were from her 2008 federal income tax refund. Other funds were provided by her roommate. She acknowledged that she undertook her efforts to pay or settle her debts because she did not want to lose her eligibility for a security clearance. I conclude that AG ¶¶ 20(a), 20(b), and 20(c) do not apply to mitigate the facts in Applicant's case. I also conclude that AG ¶ 20(d) applies in part in mitigation.

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 relevant 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's financial problems began when she was a mature adult. She was aware of her financial problems but did not address them for many years, a decision that raises concerns about her judgment and reliability.

To her credit, Applicant has taken action, albeit recent, to address her delinquencies. At her hearing, she provided documentation showing how she had paid or settled many of her debts. However, these actions are recent and do not demonstrate a track record of satisfaction of debt consistently over time. Applicant was intent on paying or settling her long-standing financial delinquencies in the days before and after her hearing in order to retain eligibility for access to classified information. Even though she paid or settled the majority of her debts, it is not clear that she understands her obligations to creditors, what brought about her long-standing financial delinquencies, or how to avoid financially irresponsible conduct in the future. She had no plan in place to prepare for future financial contingencies.

Over the years, Applicant's failure to address her financial obligations has resulted in judgments, garnishments, deductions from tax refunds to pay delinquencies owed to a state, and delayed federal income tax filings.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies.

Applicant can reapply for a security clearance one year after the date that this decision becomes final. If she wishes, she can produce new evidence that addresses the Government's current security concerns.

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.f.: For Applicant

Subparagraph 1.g. **Against Applicant**

Subparagraphs 1.h. through 1.j.: For Applicant

Subparagraphs 1.k. and 1.l.: Against Applicant

Subparagraphs 1.m. and 1.n.: For Applicant

Subparagraphs 1.o. and 1.p.: For Applicant

Subparagraphs 1.q. through 1.s.: For Applicant

Subparagraph 1.t.: Against Applicant

Subparagraphs 1.u. and 1.v.: For Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge