



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



In the matter of:)
)
) ISCR Case No. 08-10598
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro Se*

February 23, 2010

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 June 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 August 7, 2009, and elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on September 16, 2009. The FORM was

mailed to Applicant on September 18, 2009, and it was received on October 8, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on January 8, 2010.

Findings of Fact

Applicant denied all of the allegations in the SOR except ¶ 1.a. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 50 years old and was employed by a federal contractor from September 2007 to November 2008. She served in the Air Force for 20 years and was honorably discharged.

In her answer to the SOR, Applicant stated she has experienced financial problems since 2006, due to health reasons and her inability to work. She has not worked full-time since April 4, 2008, and has had three back surgeries from 2006 to 2008. She experienced a substantial reduction in income from \$122,000 annually before her disability to \$32,000. She no longer receives income or a disability payment. She admitted that because of the income reduction she has resorted to using credit cards to pay some expenses, which has caused additional financial problems. She is presently not working and living off a meager income. It is unknown what her present health problems are and whether they will affect her ability to work in the future.

Applicant admits the debt in SOR ¶1.a (\$982) but disputes the amount, stating that she made a \$600 payment, which had not been deducted from the balance. No documentation was provided to support her position and her credit report still reports the balance as stated above as owed.¹

Applicant denies she owes the debt listed in SOR ¶1.b (\$917) stating that it was paid off. She references her credit report of August 2, 2009, which shows a zero balance. No additional documentation was provided.²

Applicant admits that she owes the delinquent debt in SOR ¶1.c (\$1,000) and stated that she will address the debt as soon as possible.³

Applicant denies the debts in SOR ¶ 1.d (\$9,000) and 1.e (\$8,000) for foreclosed mortgages. She stated that the debts were paid upon the completion of a short sale of

¹ Item 4 page 24.

² Item 4 pages 1, 22.

³ Item 4 page 1.

her home. Her credit report reflects the accounts have been paid in full for less than the full balance. No other documentation was provided.⁴

Applicant denies the debts in SOR ¶¶ 1.g, 1.h, 1.j, and 1.k (totaling \$1,000, \$30, \$1,377 and \$697, respectively). She stated that these accounts have been paid in full. Her credit report does not reflect her position. She stated she is disputing the debts. She did not provide documentary evidence that she paid the debts or that she has disputed them with the credit bureau.⁵

Applicant denies the debt in SOR ¶ 1.f (\$1,000). It is no longer listed on her credit report.⁶

Applicant denies the debt in SOR ¶1.i (\$315) stating she has a current payment plan with the creditor. She did not provide supporting documents showing the terms of the plans. However, her credit report reflects a reduced past-due balance of \$65 and a prior monthly payment of \$40.⁷

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 overarching 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

⁴ Item 4 pages 1, 19.

⁵ Item 4 pages 1-2.

⁶ Item 4 pages 3-28.

⁷ Item 4 page 8.

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, an “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 has the ultimate burden of persuasion as to obtaining a favorable clearance 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 that an 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. I have considered all of them under AG ¶ 19 and especially considered the following:

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

Applicant has numerous delinquent debts that she has been unable or unwilling to satisfy for a period of time. I find both disqualifying conditions are 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 under AG ¶ 20 and especially considered the following:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Since 2006, Applicant has had financial problems due to her inability to work because of health issues. She has not worked full-time since April 2008, and it is unknown when or if she will be able to resume employment. She has paid some of her delinquent debts, but others remained unresolved. Due to Applicant's current health and employment situation, I cannot find that the circumstances are unlikely to recur. I find mitigating condition (a) does not apply. Applicant has been on disability since 2008, which has significantly reduced her income. Applicant's health predicament was a circumstance beyond her control. She has managed to pay some of her debts. Although she resorted to using credit cards to help pay her bills, I acknowledge that she likely has done the best she could have under the circumstances. I find mitigating condition (b) applies. There is no evidence Applicant has received financial counseling. She is unable to pay some of her creditors and resolve some of her delinquent debts. I find it is too soon to determine that Applicant's financial problems are under control and being resolved. I find mitigating condition (c) does not apply. I find mitigating condition (d) partially applies because Applicant has paid some debts and has not ignored her creditors.

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 served in the military for 20 years and was honorably discharged. She began experiencing financial problems when she developed medical issues that affected her ability to work. Her income was drastically reduced when she went on disability, resulting in her inability to pay her bills. As a consequence, she resorted to using credit cards and accumulated more delinquent debts. Applicant did not produce documentary proof to support her statements that she paid certain debts. Until she is in a better position to resolve her delinquent debts, it is too early to conclude that her finances are not a security concern. Overall, the record evidence leaves me with 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 under the guideline for 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs: 1.j-1.k:	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.

Carol G. Ricciardello
Administrative Judge