



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11306
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James B. Norman, Esquire, Department Counsel
For Applicant: *Pro se*

March 31, 2010

Decision

HOWE, Philip S., Administrative Judge:

On June 16, 2008, Applicant submitted her Security Clearance Application (SF 86). On September 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on September 21, 2009. She answered the SOR in writing on October 1, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 9, 2009, and I received the case assignment on November 16, 2009. DOHA issued a Notice of Hearing on December 2, 2009, and I convened the hearing as scheduled on December 14, 2009. The Government offered Exhibits 1 through 4, which were received

without objection. Applicant testified and submitted Exhibits A through C, without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 2009. I granted Applicant's request to keep the record open until January 4, 2010, to submit additional matters. On January 4, 2010, she submitted Exhibit D, without objection. The record closed on January 4, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Notice

At the hearing, Department Counsel stated the Notice of Hearing and the hearing date are less than 15 days apart. I advised Applicant of her right under ¶ E3.1.8 of the Directive to have 15 days notice before the hearing. Applicant affirmatively waived her right to 15 days notice and elected to proceed with the hearing. (Tr. at 8, 9)

Findings of Fact

Applicant's Answer to the SOR admitted all the factual allegations in the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 40, divorced and has five children. The three daughters live with her. One son lives with her former husband, and the oldest son is a college student. She was married to her husband from 1989 until divorcing him in 2001. She remarried him in 2004 and divorced him in 2009. She works for a defense contractor as a material handler and has done so for the past five years. (Tr. 22-26, 35, 51; Exhibit 1)

Applicant has 21 delinquent debts totaling \$15,684.74 listed in the SOR. She filed Chapter 7 bankruptcy in February 1999, and it was discharged in May 1999. She again filed Chapter 7 bankruptcy in July 2009, and it was discharged in November 2009. In her latest bankruptcy, the unsecured debts total \$14,221.32 on the Schedule F. Her delinquent debts listed in the SOR, and in the Chapter 7 petition, include medical debts not covered by her employer's health insurance plan, credit card debts, telephone debts, and a utility company debt. Applicant did not pay any of the debts listed in the SOR. She did not demonstrate at the hearing, or by January 4, 2010, that the SOR debts were all included in her latest bankruptcy. My examination of the bankruptcy Schedule F and the SOR showed 14 of the SOR-listed debts were included in the bankruptcy, based on creditor name and amount owed (SOR Subparagraphs 1.a, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.j, 1.k, 1.l, 1.m, 1.q, 1.r, 1.t). As part of the bankruptcy, Applicant attended and completed a personal financial management course in September 2009, and received credit counseling by telephone in July 2009. (Tr. 27-29, 42-44, 58; Exhibits 2-4, A-C)

Applicant has 12 delinquent debts listed in the SOR that are under \$200 each. These debts total \$1,212. The SOR next lists five debts under \$1,000 each. Finally, the

SOR lists four debts between \$1,000 and \$4,000. Applicant received a \$5,500 income tax refund in 2008. She used that money to buy a car. She did not use any of it to repay any debts. Her current automobile is a 2001 vehicle she received as a gift. Applicant has no credit cards. She uses a debit card or checks to pay her bills. She overdraws her checking account on a monthly basis. Between July and December 2009, Applicant paid overdraft fees that in some months were \$250. Applicant admitted she used credit cards to make purchases when she did not have the cash to spend on those items. (Tr. 33, 37, 38, 46, 47, 66)

Applicant completed answers to two DOHA interrogatories on February 9, 2009. She told the investigator in one set of answers she could not recall the delinquent accounts he listed for her. In the second set of answers she either stated she intended to file bankruptcy or "will call to pay off ASAP." She took no action on the bankruptcy filing until July 2009, and did not resolve any of the delinquent debts by payment. (Exhibits 2-4)

Applicant testified her former husband started paying child support only recently. He was frequently unemployed during their marriages, quitting jobs at his whim, and leaving the burden of supporting the family to her. Applicant's brother submitted a written character statement that supported Applicant's statements about the lack of support from her former husband. His statement added information that their mother was helping Applicant financially. He concluded by stating Applicant works hard to be the sole provider for her children and herself. (Tr. 36; Exhibits 4, D)

Applicant could not coordinate the SOR debts with those listed in her 2009 Chapter 7 bankruptcy to show which debts were discharged in that legal proceeding. Applicant did not explain persuasively why she could not have used her 2008 income tax refund to pay the 12 delinquent debts totaling \$1,212 instead of buying a car. (Tr. 42-44)

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 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Of these nine conditions, two conditions are applicable to the facts found in this case:

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

During the past decade, Applicant accumulated 21 delinquent debts for a total of \$15,684.74 that were unpaid or unresolved. She has a history of not meeting her financial obligations. She filed Chapter 7 bankruptcy twice in 10 years. She overdrew her checking account regularly during the last five months of 2009, thereby obligating herself to pay fees totaling \$250 in some months. Applicant demonstrated persuasively she cannot manage her personal finances. AG ¶ 19 (a) and (c) apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three mitigating conditions may be potentially applicable:

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

AG ¶ 20 (b) might apply because of her former husband's unemployment situations and lack of his financial support to their family. They married and divorced twice. His behavior did not change during those marriages, and the two bankruptcies show the situation continued over a decade. Applicant continued to spend money she could not repay, however, showing she did not act responsibly under the circumstances. This mitigating condition does not apply.

AG ¶ 20 (c) imposes a two-part requirement for its applicability. Applicant must receive financial counseling and/or there must be clear evidence the situation is under control. Applicant received counseling, but only as part of the requirement under the U.S. Bankruptcy Code for filing a Chapter 7 bankruptcy petition. Applicant introduced no evidence that she voluntarily sought counseling before she filed bankruptcy. Her testimony that she overdrew her checking account between July and December 2009 while the bankruptcy petition was being considered by the bankruptcy court shows

Applicant has not resolved her financial problems and continues to repeat her financial mismanagement. Based on the facts, this mitigating condition does not apply.

The last potentially applicable mitigating condition pertains to the initiation of a good-faith effort to pay debts or otherwise resolve them. Applicant used a legal method to rid herself of at least 14 of her debts through the Chapter 7 bankruptcy. The U.S. Bankruptcy Code discharges all debts at the time the court order is entered, regardless of whether or not it is listed in the petition and schedules. Applicant's debts were discharged. However, she had previously used that process in February 1999. She learned nothing in the past decade about management of her personal finances. She did not make any effort to pay any of the creditors listed in the SOR. These actions are not good-faith efforts to resolve her debts. This mitigating condition is not applicable under the facts.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 has been an adult during all of her financial difficulties. She filed Chapter 7 bankruptcy twice in 10 years, demonstrating she cannot manage her personal finances. She is likely to continue this type of mismanagement into the future, having established a pattern of it. There is no permanent behavior change because she continues to overspend her income as shown by the overdrafts on her checking account in 2009. Her conduct is frequent and recent. Nothing has changed for Applicant over the past decade financially.

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 did not mitigate the security concerns arising from her financial considerations. I conclude the “whole-person” concept against Applicant.

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 to 1.v:	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.

PHILIP S. HOWE
Administrative Judge