



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-01294
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

May 6, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG).

Applicant answered the SOR on December 4, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on January 28, 2010, and reassigned to me on February 25, 2010. DOHA issued a notice of hearing on February 18, 2010, and the hearing was convened as scheduled on

March 10, 2010. The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE D through G and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on March 18, 2010.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She has worked for his current employer since August 2008. She is seeking to obtain a security clearance. She attended college for a period but did not obtain a degree. She is married. She has a six-year-old child, a three-year-old child, and twins less than a year old. She also has a 12-year-old stepchild who lives with the child's mother.¹

Applicant and her husband were just barely getting by financially until she was laid off her job in December 2004. When she finally found another job, it was at a much lower pay. She was recalled to work at the first job and their finances stabilized again. In about January 2007, her husband obtained a job in another location. The costs of maintaining two households until the family could move to her husband's location took a toll on their finances. Applicant was unemployed again for several months in 2007. Applicant and her husband purchased a large truck in order to be able to transport the entire family. They could not afford the large loan payments and the high gas costs. They used loans in order to maintain the truck, but it was eventually voluntarily repossessed. They were unable to pay all their bills, and several debts became delinquent.²

The SOR alleges 18 delinquent debts. The debts were listed on credit reports obtained on November 15, 2008 and September 21, 2009. Applicant admitted owing the debts alleged in SOR ¶¶ 1.b, 1.e, and 1.h to 1.k. She denied owing the debts in the remaining allegations. The status of the debts alleged in the SOR is addressed below.

Applicant denied owing the medical debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.m to 1.p because she did not recognize the creditors. All the debts were listed on the 2008 credit report. The debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.f were also listed on the 2009 credit report. Applicant and her husband had medical insurance and she thought all their medical bills had been paid. She has not formally disputed any of the debts.³

SOR ¶ 1.g alleges a delinquent debt of \$288 owed to a collection company, collecting on behalf of a cellular telephone services company. Applicant had a contract

¹ Tr. at 33, 68, 73-74; GE 1.

² Tr. at 25-28; GE 2.

³ Tr. at 44-48; Applicant's response to SOR; GE 2-4.

with the company several years ago and ended the service before the end of the contract. She never received a final bill and did not realize there was a balance due.⁴

SOR ¶ 1.i alleges a delinquent debt of \$10,728 owed on the deficiency on a truck loan after Applicant's truck was voluntarily repossessed in about February 2008. Applicant and the collection company handling the debt agreed to settle the debt for \$5,500 in June 2009. The settlement agreement called for three monthly payments of \$100 in July through September 2009, followed by a \$5,200 payment in October 2009. Applicant made five payments of \$108 to the collection company, one in July, two in August, and two in September 2009. She was unable to make any additional payments because she was placed on bed rest and unable to work for several months pending the birth of her twins. She received disability, which she estimated was about 75% of her regular pay. Applicant intends to resume making the monthly payments.⁵

Applicant admitted that she was 30 days and \$1,040 past-due on a car loan, as alleged in SOR ¶ 1.k. She made payments in about August 2009 to bring the debt current. The loan then became delinquent again while she was on bed rest. The car was repossessed in about October 2009.⁶

SOR ¶ 1.l alleges a delinquent debt of \$2,370 owed to a collection company, collecting on behalf of the landlord of an apartment where Applicant and her family used to live. Applicant had insect problems at the apartment that the landlord refused to fix. She withheld rent and the landlord issued a notice to evict them. They then moved out. Applicant did not receive her deposit back. She disputed owing \$2,370, because another tenant moved into the apartment the next month. The debt is listed on the 2008 credit report, but not the 2009 report.⁷

Applicant denied owing the \$236 delinquent debt to a collection company on behalf of a telecommunications company, as alleged in SOR ¶ 1.q. She stated that she did not recognize the companies. The debt is listed on the 2008 credit report, but not the 2009 report.⁸

SOR ¶ 1.r alleges a delinquent debt of \$851 owed to a collection company, collecting on behalf of a chain restaurant. Applicant disputed owing the debt. There is no evidence that Applicant ever owed \$851 to the restaurant. The 2008 credit report listed the debt with a balance of \$32. The debt is not listed on the 2009 report.⁹

⁴ Tr. at 48-49; Applicant's response to SOR; GE 2-4.

⁵ Tr. at 26-43; Applicant's response to SOR; GE 2; AE C.

⁶ Tr. at 51-54; Applicant's response to SOR; GE 2.

⁷ Tr. at 55-63; Applicant's response to SOR; GE 2-4.

⁸ Tr. at 63-64; Applicant's response to SOR; GE 3, 4.

⁹ Tr. at 64-65; Applicant's response to SOR; GE 3, 4.

Applicant admitted owing the remaining debts alleged in SOR ¶¶ 1.b, 1.e, 1.h, and 1.j. The total amount owed on those four debts is \$3,017. The debts range from \$37 (SOR ¶ 1.b) to \$1,503 (SOR ¶ 1.e) owed to a jewelry store. None of the debts have been paid.¹⁰

Applicant had not received financial counseling as of the date of the hearing. After the hearing, she researched a well-known financial advisor through the internet. She has plans to attend classes provided at a local church. She and her husband are able to pay their current debts on their combined income, but they have little discretionary income after their bills are paid. She stated that it will take time, but she plans to address her delinquent debts.¹¹

Applicant is a valued and trusted employee. Her supervisor praised her exceptional job performance, as well as her ethics, honesty, and integrity. Additional letters attest that she is hardworking, forthright, reliable, trustworthy, and responsible. The character references recommend her for a security clearance.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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.

¹⁰ Applicant's response to SOR; GE 3, 4.

¹¹ Tr. at 71-73; AE D, G.

¹² AE A, B, E, F.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 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 EO 10865 provides that adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 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 still has a number of delinquent debts. Her financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partly caused by her periods of unemployment and underemployment. She also lost income when she was placed on bed rest before the birth of her twins. These qualify as conditions that were outside her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant acted responsibly when she brought her car loan current and she started paying back the deficiency owed on a car loan after her truck was voluntarily repossessed. However, she stopped the payments while she was on bed rest, and they have not yet resumed. She was unable to maintain her car loan payments, and another car was repossessed. I am unable to determine that she has acted completely responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant did not receive financial counseling as of the date of the hearing, but she has researched a well-known financial expert and she plans on attending classes at a local church. That is a good start. Applicant clearly can benefit from counseling and advice on how to manage her money. However, at this point, her finances are not being resolved and are not under control. Her limited payments to date are insufficient to support a finding that she has made a good-faith effort to pay or otherwise resolve her debts. AG ¶¶ 20(c) and 20(d) are not applicable.

Applicant has not formally disputed any of the debts she denied owing. However, her testimony about the disputed debts was credible. AG ¶ 20(d) is applicable to the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.l through 1.r. It is not applicable to the debt alleged in SOR ¶ 1.g, because she admitted she had cellular telephone service with the provider and she terminated the service before the end of the contract.

At this point, Applicant's finances remain a concern despite the presence of some 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. I also found Applicant to be honest and candid about her finances. I believe she is sincere about getting her finances in order. However, she is not close to reaching that point, as evidenced by her car being repossessed while she was in the process of attempting to pay the deficiency owed on her truck that was repossessed. Applicant is a good and valued employee. Hopefully her company will maintain her position until her finances are more conducive to the holding of a security clearance.

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 has not mitigated the Financial Considerations 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.k:	Against Applicant
Subparagraphs 1.l-1.r:	For 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.

Edward W. Loughran
Administrative Judge