



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



In the matter of:)
)
) ISCR Case No. 09-02348
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

May 13, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant has paid none of the 24 delinquent debts listed in the Statement of Reasons (SOR). 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 an SOR on August 27, 2009, detailing security concerns under financial considerations.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On October 6, 2009, Applicant answered the SOR, and requested a hearing. On December 22, 2009, I was assigned the case. On January 4, 2010, DOHA issued a notice of hearing for a hearing held on January 27, 2010. At the hearing, the Government offered Exhibits (Ex.) 1 through 8, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through F, which were admitted into evidence. On February 4, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she admitted all the factual allegations in the SOR. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 36-year-old investigations analyst who has worked for a defense contractor since November 2008, and is seeking to obtain a security clearance. (Tr. 50) Coworkers indicate Applicant's conduct is exemplary and she fully accepted the responsibility for financial situation. (Ex. E) Applicant displays high ethical standards, conscientious work habits, mature judgment, and fully and forthrightly admits her mistakes. (Ex. F)

In 2006, Applicant wrote a check for groceries. At the time she wrote the check, she did not know there were insufficient funds in the account. (Ex. 4) In November 2008, Applicant was arrested and charged with theft of property greater than \$20 and less than \$500 by check. (Ex. 2, Ex. D) She pleaded guilty, was fined \$200, and sentenced to four days in jail. In December 2008, she paid \$250.65 (SOR ¶ 1.y) in restitution. (Ex. 5, Ex. C)

The SOR alleges 24 delinquent debts, which include 22 debts that total approximately \$6,000. There is also a \$2,717 delinquent loan debt (SOR ¶ 1. h) and a \$22,724 debt which arose from a repossessed leased truck. (SOR ¶ 1. w).

In 2003, Applicant thought she was purchasing a truck when in fact she was leasing it. (Tr. 28) She did not want a lease because of the expensive additional insurance required. (Ex. 4) Two weeks after the lease, the clutch needed repairs. Within two to three months of the lease, the vehicle needed additional repairs twice more including replacement of the power steering pump. (Tr. 29) She called the auto lot and told them to come and get the non-working truck. The auto company states Applicant owes them \$22,724 (SOR ¶ 1. w). The creditor offered to settle this matter for \$8,500, which she is unable to pay. (Ex. 6, Tr. 29)

In 2001 or 2002, Applicant took out a personal loan which might have been used for medical treatment or for a car. (Ex. 4) Applicant owes \$190 (SOR ¶ 1. o) on this loan. In 2002, she purchased a Saturn automobile for \$7,000 with \$280 monthly payments. A year and a half later, it was repossessed when she missed a payment.

(Ex. 4) She was told she could redeem the car by paying the \$2,000 balance on the vehicle, which she was unable to do. The debt was initially \$2,717 (SOR ¶ 1. h). She is unable to pay the current balance of \$4,387. (Ex. 6)

Applicant and her husband had seasonal contract work instead of permanent full-time jobs. (Tr. 29) He was a pipe fitter and she worked in document control. (Tr. 38-39) These positions did not have health insurance. (Tr. 30) This contributed to their financial problems. (Ex. 4) Nine of the SOR debts, which total approximately \$2,800, were for medical bills. Applicant and her two children were first covered by her husband's medical insurance in 2006 or 2007. (Tr. 35) In 2005, Applicant's husband obtained a full-time job as a locomotive engineer and in 2007; she obtained her current full-time job. (Tr. 30) Applicant asserts that as of December 2008, their financial picture had improved now that they have full-time jobs. They are able to pay their current obligations, but have not addressed the past-due debts. (Ex. 4)

In May 2009, Applicant responded to written interrogatories. (Ex. 6) She disputed the six following debts, which total \$1,642: \$553 electric utility bill (SOR ¶ 1. b); \$235 medical bill (SOR ¶ 1. l); \$66 medical (SOR ¶ 1. n); \$203 (SOR ¶ 1. p); collection agency collecting a \$470 telephone bill (SOR ¶ 1. d); and \$124 gas utility bill (SOR ¶ 1. f). She was unable to locate the following six accounts, which total \$1,967 : the medical provider in a \$379 medical debt (SOR ¶ 1. c); \$50 medical bill (SOR ¶ 1. q); \$820 medical bill (SOR ¶ 1. r); \$558 medical bill (SOR ¶ 1. u); \$50 medical bill (SOR ¶ 1. s); and, \$110 medical bill (SOR ¶ 1. t). She was unable to resolve the six following debts, which total \$1,591: collection agency collecting a \$226 telephone bill (SOR ¶ 1. e); collection agency collecting a \$246 telephone bill (SOR ¶ 1. m); \$190 (SOR ¶ 1. o); \$176 loan obligation (SOR ¶ 1. v); \$469 hospital bill (SOR ¶ 1. j); and \$284 (SOR ¶ 1. k).

An additional \$20 debt placed for collection by a restaurant (SOR ¶ 1. g) was being investigated. She paid two debts of \$44 and \$191 not listed in the SOR. (Ex. 6, l-19, l-20, Ex. A, Ex. B) In May 2009, she asserted she would pay a \$41 debt (SOR ¶ 1. i) within the next few months.

In November 2008, Applicant completed an Electronic Questionnaires for Investigations Processing (E-QIP) in which she listed a number of delinquent debts. Applicant is currently not receiving any calls or letters from creditors demanding payment. (Tr. 31) Applicant was first asked about her delinquent debts in January 2009 and she answered written interrogatories about her debts in May 2009. (Ex. 4, 5, 6, Tr. 48) Applicant's husband's annual salary is approximately \$33,000 as is her annual salary. (Tr. 49)

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 must be considered 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.

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 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 Guideline (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 as agreed. Absent substantial evidence of 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 has 22 unpaid debts, which total approximately \$6,000, an unpaid loan of approximately \$3,000, and a repossessed leased vehicle which the creditor has offered to settle for \$8,500. 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.

Applicant's financial problems were contributed to by her and her husband's previous job history. They worked seasonal contract work until 2005 when her husband obtained a full-time job as an engineer and in 2007 when she obtained her current full-time job. AG ¶ 20(a) does not apply because the debts remain unpaid and were numerous.

The nature of Applicant and her husband's prior jobs did not offer medical insurance. Nine of the SOR debts totaling approximately \$3,000 were for medical services provided when Applicant did not have medical insurance. This is a factor beyond her control. Medical debts will not be a problem in the future because both her job and her husband's job have medical coverage for their family. AG ¶ 20(b) has limited applicability.

Applicant has not received any financial counseling and the debts remain unpaid. She appears to be meeting her new obligations and is not receiving any calls or letters from creditors demanding payment. Since the debts have not been paid there is no clear indication the problem has been resolved. AG ¶ 20(c) does not apply.

For AG ¶ 20 (d) to apply there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling her debts is needed, which is not present here.

In May 2009, Applicant disputed six debts, which total \$1,642. For AG ¶ 20 (e) to apply there must be a reasonable basis to dispute the past-due obligations and Applicant must provide documented proof to substantiate the basis of the dispute. Applicant has provided no documents related to the dispute of these six debts. AG ¶ 20 (f) does not apply because affluence was not alleged.

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. A number of the debts incurred were not the type that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries. Nine of the debts involved medical treatment.

Now that Applicant and her husband have full-time jobs they appear to be meeting their current financial obligations. However, the 24 SOR debts remain unpaid. In January 2009, Applicant was questioned about her unpaid obligations. Since then, she has been able to provide documentation that she has paid three debts, which total approximately \$500. It is noted that four of the unpaid debts were each for amounts of \$50 or less. An additional ten of the debts were each for amounts of \$250 or less. These 14 unpaid debts, more than half of the SOR debts alleged, total approximately \$2,000 and remain unpaid.

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 mitigated the security concerns arising from her unpaid financial obligations.

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 lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid 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.

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 Consideration: **AGAINST APPLICANT**

Subparagraphs 1.a—1.y: **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