



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



In the matter of:)
)
) ISCR Case No. 09-05317
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of financial indebtedness. She currently has 17 delinquent debts, and has failed to submit proof that any of them are satisfied. She has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 8, 2010, 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 revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing in an undated submission received by DOHA on February 1, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on February 18, 2010. A complete copy of the file of relevant material (FORM) was received by Applicant on February 26, 2010. She was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded in a one-page undated letter, presumably within the allotted timeframe. On March 22, 2010, Department Counsel indicated it had no objection to Applicant's response to the FORM. The case was assigned to me on April 6, 2010.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. She is a high-school graduate and has worked full-time as a contractor since February 2008. She was married in August 2002, but separated from her spouse in July 2008 and indicated she is now divorced. She is a single parent of two children, ages 14 and 5.

Applicant's financial difficulties began in approximately 2003. From 2000 to 2003, she worked as a mortgage broker. She had a good income and acquired 15 store credit cards, a home, and a rental property. During this period, she shopped heavily and accumulated large debts. In 2003, her employer closed their office and Applicant lost her job. She found she could not afford to make payments on obligations incurred prior to her job loss. In addition, she became pregnant with her second child and found that her ability to repay her financial obligations was limited.

The SOR alleges 18 delinquent debts, 17 of which were substantiated by the record. Applicant admitted all 18 debts alleged in SOR totaling \$30,853, with explanations, noted in part, below. In her Answer, she indicated that with respect to the debts listed in 1.a, 1.b, 1.d-1.f, 1.j-1.l, 1.p, and 1.q, she had contacted each of the creditors and planned on making \$20 a month payments to each of them, beginning March 2010. Applicant was still in the process of contacting the creditors for the debts listed in 1.c, 1.g, 1.h, 1.i, 1.m, and 1.r, as of her Answer to the SOR. While Applicant admitted 1.n, she claimed it duplicated 1.a. Both debts were listed as medical accounts in the amount of \$191. She has not resolved this account, but because it appears to be the same account, she maintains it should not be counted as two separate debts. Further, Applicant disputed owing a phone bill in the amount of \$193.20, as alleged in 1.o. Applicant contacted the account holder, and learned that the debt was for a residential phone line in Ohio. Applicant never lived in Ohio. She indicated that she would file a dispute with the credit bureau, although she provided no documentary evidence that she disputed this debt formally. At the time she responded to the FORM, all of her debts remained unpaid. (Item 3; Item 5; Item 6; Item 7.)

Applicant claims she has been unable to address her delinquent debts due to her divorce. During the divorce, her former husband lost his job and was unable to pay child support. Applicant borrowed money from her father to make ends meet. In Applicant's

adopted statement, she indicated that she intended “to allow the accounts to fall off her credit report over time.” (Item 5 at 3-5.)

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 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.

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 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 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* EO 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:

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.

There is no legitimate concern raised in allegation 1.n, as it duplicates the concern raised in 1.a. However, with respect to the other 17 allegations, Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations. Her financial problems have been ongoing since 2003, without resolution. To date, Applicant has been unable to satisfy any of her past-due accounts. The evidence supports application of disqualifying conditions AG¶¶ 19(a) and 19(c).

Under AG ¶ 20, the following potentially mitigating factors are potentially relevant:

- (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;
- (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.

Although Applicant's debts have been accruing for several years, they are not in the distant past, as they remain unpaid. Her failure to demonstrate any payments on the 17 delinquent accounts raises questions about her reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies, in part, because numerous events occurred in Applicant's life that affected her ability to satisfy her debts. In 2003, she lost her job, which resulted in a loss of income. She had further financial difficulties when she became pregnant with her second child in 2003. Her 2008 separation and subsequent divorce also created a financial strain on Applicant, when her former husband lost his job and could not pay child support. These factors had an effect on her financial status and were beyond her control. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has worked for her current employer since 2008. She did not submit evidence of any payments even on the smallest debts. Instead, she was waiting for the debts to "fall off her credit report." She did not present a plan on how she will address her delinquent debts, except for her promises to pay \$20 per month to the creditors in 1.a, 1.b, 1.d-1.f, 1.j-1.l, 1.p, and 1.q. She presented no documentation to show she followed through on this promise. In fact, she indicated in her reply to the FORM that no payments had been made. She did not formally contest the debt in 1.o. I am unable to make a determination that she acted responsibly under the circumstances. Therefore, Applicant's debts in 1.a-1.m and 1.o-1.r are not mitigated by AG ¶ 20(b).

Applicant disputes owing 1.o, as alleged in the SOR, however, she admitted this debt in her Answer. Further, she presented no evidence to show that she was in the process of disputing this debt or that she had successfully disputed this debt in the past. AG ¶ 20(e) is inapplicable.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but warrant additional comment. I considered Applicant's status as a single mother, her job loss in 2003, and her divorce. However, Applicant is 35 years old. She is clearly aware of the need to be financially responsible. She accumulated substantial debts and has not shown that she has a plan to resolve her financial situation. An applicant is not required to be debt-free, or establish that she paid every debt. But she must demonstrate that she has established a plan to resolve her debts and that she is taking action to implement that plan. Here, Applicant has not established such a plan, and remains indebted for \$30,662.

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 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
Subparagraphs 1.a-1.m:	Against Applicant
Subparagraphs 1.n:	For Applicant
Subparagraphs 1.o-1.r:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge