



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05694
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

December 9, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant continues to owe creditors approximately \$19,000 in delinquent debt and remains unable to resolve her indebtedness. Clearance is denied.

Statement of the Case

On April 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 adjudicative guidelines (AG), as implemented by the Department of Defense on September 1, 2006.

On May 6, 2010, Applicant answered the SOR, admitting all of the allegations except SOR subparagraphs 1.i, 1.l, 1.m, 1.n, 1.p, and 1.r. She requested an administrative determination. On June 10, 2010, Department Counsel prepared a File of

Relevant Materials (FORM). On June 11, 2010, DOHA mailed it to Applicant, and she received it on June 22, 2010, along with instructions to file any objections or supplementary information within 30 days. Applicant did not respond, and the case was assigned to me on September 20, 2010.

Findings of Fact

Applicant is a 34-year-old single woman with two children, ages eight and five. She has a high school diploma and attended community college for one year. She has worked as a security guard for various defense contractors since October 2006.

The SOR alleges Applicant owes creditors approximately \$19,000 of delinquent debt. Applicant admits owing creditors approximately \$15,800 of delinquent debt, but denies owing the remaining creditors listed in the SOR as noted in the Statement of the Case.

Applicant's debts, including the ones she denies, are set forth in credit reports from September 2007, May 2008, and March 2010. (Items 6-8) They include, among other things, a delinquent student loan account (SOR subparagraph 1.a), a repossessed car (SOR subparagraph 1.b), and multiple medical bills (SOR subparagraphs 1.c - 1.e).

Applicant did not provide documentary evidence establishing the basis for denying the debts listed at 1.i, 1.l, 1.m, 1.n, 1.p, and 1.r. Based on the record evidence, I find Applicant owes creditors approximately \$19,000 in delinquent debt, as alleged.

Applicant purchased a car in 2000. (Item 5 at 9) In October 2003, she was fired from her job for cause and was subsequently unemployed for the next three months. While unemployed, she fell behind on her car payments, leading to its repossession. (*Id.*, Item 4 at 20)

Applicant attributes the delinquent medical bills to unexpected medical treatment stemming from a difficult pregnancy in 2005 and a serious car accident in 2007. Her outstanding medical bills total approximately \$170.

Applicant listed several of her delinquencies on her May 2009 SOR. She listed the status of their resolution as "in progress." (Item 4 at 41-42) Seven months later, in responses to Interrogatories, Applicant acknowledged that the delinquencies remained unpaid, and provided no evidence of any steps taken to resolve them. (Item 5)

As of May 5, 2010, the date of Applicant's answer, she had not provided any evidence documenting payment of any of her delinquencies, but promised to begin paying them "in the near future . . . when [she was] able." (Item 3 at 4)

Applicant maintains a budget. (Item 5 at 14) Currently, she spends approximately \$170 more than she earns each month. Her budget does not include the projected expense of a future debt repayment plan.

Policies

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

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 as to obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18).

Applicant's history of delinquent debts triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable under AG ¶ 20:

20(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;

20(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;

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

20(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 first began experiencing financial problems when she lost her job in 2003 and was subsequently unemployed for the next three months. Because she was fired from her job for cause, I do not consider this a circumstance beyond her control for AG ¶ 20(b) to apply. Although she contends that medical problems exacerbated her financial problems in 2007, the medical bills listed in the SOR constitute less than \$200.

Applicant provided no evidence of receiving any counseling, and has yet to arrange any payment plans. Consequently, I conclude that neither the remaining prong of AG ¶ 20(b), nor AG ¶¶ 20(c) or 20(d) apply.

Applicant disputed several of the delinquencies listed in the SOR, but provided no evidence of any efforts to support the bases of these disputes or any efforts taken to resolve the disputes. AG ¶ 20 (e) does not apply.

Whole-Person Concept

Under the whole-person concept, 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.

Applicant has approximately \$19,000 of delinquent debt. Despite her promise to implement a payment plan in the future, she currently spends more than \$170 each month than she earns. Under these circumstances, the likelihood of her financial problems continuing remains too high, despite her intentions to resolve her debt. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the Financial Considerations security concern.

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.u:	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.

MARC E. CURRY
Administrative Judge