



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



In the matter of:)
)
) ISCR Case No. 09-05830
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'l Garcia, Esquire, Department Counsel
For Applicant: Gregory Smith, Personal Representative

March 31, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On November 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 28, 2009, and requested a hearing before an administrative judge. The case was assigned to me on February 1, 2010. DOHA issued a Notice of Hearing on February 2, 2010. I convened the hearing as scheduled on February 24, 2010. The Government offered Exhibits (GE) 1 through 7.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through O, which were admitted without objection. The record was held open until March 9, 2010, to allow Applicant to submit additional documents. She submitted AE P through W. Department Counsel had no objections and the exhibits were admitted and the record closed. DOHA received the hearing transcript (Tr.) on March 3, 2010.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶¶ 1.c, 1.e, 1.f, and 1.h. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 26 years old and has worked as a contract specialist for a federal contractor since April 2009. She is a high school graduate and has earned some college credits. She is not married and has no children. She is the eldest of three children of a single mother. She has a 23-year-old brother and a 12-year-old sister. In the past, Applicant has assisted her mother and siblings financially, sometimes to her own financial detriment.¹

Applicant worked for a federal agency from June 2004 to January 2006. She worked part-time for approximately eight years for a delivery company until she began her present job. When working for the delivery company, she started out as a temporary employee and later became a part-time permanent employee. She used her income to support herself and help her family. She was living with her mother during this time. Since she began her present employment she is earning more money and addressing some of her past debts. She intends to repay all of her delinquent debts.²

The debts in SOR ¶¶ 1.a (\$275) and 1.b (\$208) are for medical bills that Applicant believed her father's medical insurance covered. She contacted the creditor and has made arrangement to pay the debts. She credibly testified she was unaware of the debts until June 2009, because she never received a bill. She stated the debts are consolidated and she paid \$140 to the collection company at one time and she also paid \$50 towards the debts in September 2009.³ She intends to pay the remaining balance by the end of March 2010.⁴

The debt in SOR ¶ 1.c is a medical debt (\$1,189) incurred in 2006. Applicant was a full-time student at the time and was unaware of the debt. She contacted the credit

¹ Tr. 161-168.

² Tr. 26-27, 48-54.

³ AE K, GE 3.

⁴ Tr. 31-41.

bureau to determine the creditor. She is not sure what insurance she may have had at the time. She intend to satisfy the debt by April 2010.⁵

The debt in SOR ¶ 1.d (\$2,134) is for an auto loan incurred in 2005. Applicant was led to believe by her father and uncle that they were going to help pay the loan. The loan was in her name only. The original debt was \$9,000. She made regular payments until sometime in 2007, when she stopped because she could not afford to make the payments. She stated she had an agreement with the creditor to make partial payments because she had “gap” insurance on the loan, but the company refused to accept partial payments. She attempted to make partial payments four times. She was initially told they would accept a partial payment and then they rejected her attempts. She again contacted the creditor and was told they would only accept a lump-sum pay-off amount on the debt. Appellant attempted to obtain a loan to pay this debt, but was declined. At one point, she believed her car was stolen and reported it to the police, but later learned it had been repossessed.⁶

The debt in SOR ¶ 1.j (\$5,152) is for a loan related to ¶ 1.d. Applicant explained that the debt in SOR ¶ 1.d was for the interest on this loan and ¶ 1.j is the principal on the car loan. Appellant understands she is responsible for repaying these debts. She plans to resume paying the debts in June 2010, as part of her overall payment plan.⁷

The debts in SOR ¶¶ 1.e and 1.f are student loans that were past-due. She disputed that the debts were delinquent and her credit report shows she is making monthly payments on the debts.⁸

The debt in SOR ¶ 1.g is for unpaid car insurance. The debt is about two years old. Applicant made a payment of \$60 on February 16, 2010. She intended to make another payment of \$100 in February 2010, and another the following month.⁹

The debt in SOR ¶ 1.h is for telephone services. Applicant stated she disputed this account with the creditor. She provided proof she settled and paid the debt.¹⁰

The debt in SOR ¶ 1.i (\$5,045) was a loan for a school Applicant attended and then withdrew from it.. The original loan was for \$8,000. She stated she contacted the school and plans to make payments. She never received the money, but rather it went

⁵ Tr. 42-44; GE 5.

⁶ Tr. 44-47, 58-73; GE 3.

⁷ *Id.* Tr. 97-98. I am unfamiliar with a loan that splits the principal and interest into two separate loans.

⁸ Tr. 73-77; GE 5 at 2, GE 6; AE N, O.

⁹ Tr.77-79; AE L. The record was held open until March 9,2010. Applicant did not provide documentary proof that she made this additional payment.

¹⁰ Tr. 79-86; GE 7; AE R.

directly to the school. She stated she learned that she actually owes \$4,000 to a collection company. She plans to repay this debt, but has not made any payments yet.¹¹

The debt in SOR ¶ 1.k (\$2,628) is a line-of-credit Applicant obtained in 2006. She agreed that she would take out the line-of-credit for \$6,000, and her mother would use \$3,000 and she would repay that amount. Applicant would use the other \$3,000 and repay her share. Her mother cosigned the loan. Applicant was making her own payments, but her mother fell behind in making her payments. They defaulted on the loan in 2006. Applicant stated that she satisfied the debt with payments to the current collection company, through a settlement agreement. Applicant provided proof she made payments to a collection company and it appears the debt is paid.¹²

The judgment in SOR ¶ 1.l (\$3,088) is a debt for rent on an apartment that Applicant cosigned for a friend. Applicant agreed to take on the financial responsibility of obtaining an apartment for a friend, who had experienced a tragedy. Her friend stayed in the apartment for 6 of the 12 months leased, and then notified Applicant that she was falling behind in paying the rent. The friend then vacated the apartment without providing proper notice to the landlord. Applicant contacted the landlord and told him she would make the payments. She attempted to make arrangements to pay the debt, but could not afford the payments. She has since arranged a payment plan to pay \$127 a month. She has made six payments since August 2009.¹³

Applicant has other delinquent debts that were not included in the SOR that she is making payments on. She owes a phone bill in her name for approximately \$1,000 that her mother was to pay, but did not. She has been making payments since November 2009. She also has moved out of her mother's house and is sharing rent on an apartment.¹⁴

Applicant has not sought financial counseling. She understands she needs to take care of her own debts and not spend her resources helping others when she does not have enough money for her needs. She intends to pay all of her delinquent debts. Post-hearing, she provided a copy of a spreadsheet with a plan for repaying her delinquent debts.¹⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief

¹¹ Tr. 87-97.

¹² Tr. 98-113; 123-138; AE C, D, F, H, I, Q, S, T, U, V.

¹³ Tr. 113-122; GE 5 at 2; AE E.

¹⁴ Tr.140-150.

¹⁵ Tr. 139; AE P, W.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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. 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 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 protect 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 notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Appellant has a history of being unwilling or unable to meet her financial obligations. She has debts that remain unpaid and delinquent. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

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

Applicant's behavior is recent because her delinquent debts remain unpaid. She has resolved some delinquent debts, is paying others, and has plans to institute payments on others in the future. At this point, it is too early to conclude that her financial problems are unlikely to recur. I find mitigating condition (a) does not apply.

Applicant has assisted relatives and friends financially to her detriment. She has made some poor financial choices that have affected her overall financial stability. These matters were within her control. She believed her father and uncle were paying for her car and medical bills and that she was covered by her father's medical insurance. These matters were marginally outside of her control. These facts raise the application of mitigating condition (b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. In this case, Applicant has made some effort to make payments to resolve some of her delinquent debts. She has others that she has not addressed because she does not have the money. When Applicant purchased a car in her name she should have been more diligent in what her financial responsibility was for satisfying that debt. This is also true for ensuring she was properly covered under her father's insurance plan. I find mitigating condition (b) only partially applies.

There is no evidence Applicant has received financial counseling, although she has put together a budget. She has paid some debts, is paying others, and intends to pay the remainder of her delinquent debts in the future. At this juncture, it is too early to conclude that Applicant's financial problems are under control. By her own estimation, she has approximately \$14,800 in delinquent debts that are included in the SOR. She admitted she has other delinquent debts that were not listed. I find mitigating conditions (c) and (d) do not apply.

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. Applicant graduated high school and has completed some college courses. She has assisted her mother, siblings, and others, financially. Unfortunately, she cosigned for financial obligations that were beyond her means to pay. When the person she cosigned with defaulted on the obligation, she incurred an additional financial obligation. She is working hard to pay all of her delinquent debts and has plans to resolve all of them in the future. Applicant needs more time to resolve her delinquent debts, implement her intended repayment plan, and establish a record of being fiscally responsible. Once she does this, she is likely to be a viable candidate for a security clearance. However, at this time, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

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.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interests to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge