



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



In the matter of:)
)
) ISCR Case No. 09-07858
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

October 15, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Applicant completed and certified a security clearance application (SF-86) on July 13, 2009. On September 24, 2009, she was interviewed by an investigator from the U.S. Office of Personnel Management and provided information about her financial obligations. On April 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. DOHA acted 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on June 4, 2010, declined a hearing, and requested that her case be adjudicated on the written record. The Government compiled its File of Relevant Material (FORM) on July 21, 2010. The FORM contained documents identified as Items 1 through 10. By letter dated July 21, 2010, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on July 27, 2010. Her response was due on August 26, 2010. She did not file additional information within the required time period. On September 21, 2010, the case was assigned to me for a decision.

Findings of Fact

The SOR contains eleven allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.k.). In her Answer to the SOR, Applicant neither admitted nor denied the allegations at SOR ¶¶ 1.a., 1.b., and 1.c., thereby constructively denying the three allegations.¹ She admitted the allegations at SOR ¶¶ 1.d., 1.e., and 1.f., which alleged unpaid medical accounts, and she stated that she was “in dispute with medical claim” for each of those allegations. Applicant also admitted the SOR allegations at ¶¶ 1.g., 1.h., 1.i., and 1.k. She denied the debt alleged at SOR ¶1.j. Applicant’s admissions are incorporated as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government. The record evidence includes Applicant’s Answer to the SOR; her 2009 SF-86; two personal subject interviews, dated September 2, 2009 and September 24, 2009; her responses to DOHA interrogatories;² and her credit reports of April 4, 2010, January 28, 2010, and August 8, 2009. (See Items 5 through 10.)

Applicant is 27 years old and never married. In December 2007, she completed her higher education and received a Bachelor of Science degree. Since December 2008, she has been employed as a lead technician by a government contractor. She seeks a security clearance for the first time. (Item 5.)

On March 30, 2010, Applicant responded to DOHA’s financial interrogatories. She acknowledged five delinquent medical debts, which are identified on the SOR at ¶¶ 1.a., 1.c., 1.d., 1.e., and 1.f. as unsatisfied as of April 29, 2010. In her response to the

¹ In response to SOR ¶¶ 1.a., 1.b., and 1.c., Applicant stated: “Cannot admit nor deny; I was not aware of this debt but will inquire.” (Item 4 at 1.)

² Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on September 2, 2009 and September 24, 2009. On March 30, 2010, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that she had read the summaries of the interviews and found them to be true and correct. She provided additional information about her roommates and said they did not incur unreasonable utility expenses while she was away from the apartment she shared with them between January and April 2008. She made no other changes, additions, corrections, or revisions to the investigator’s summaries. (Item 6.)

interrogatories, she stated she had disputed these debts with her insurance providers. She also stated she would ask her insurance providers to review the debt again. However, in her June 4, 2010, answer to the SOR, Applicant claimed she was not aware of the delinquent debts alleged at SOR ¶¶ 1.a. and 1.c., but would inquire about their status. She did not provide documentation to corroborate her statements that she had disputed the debts or had contacted her medical insurers to request further review of the debts. (Item 7 at 7; Item 4 at 1.)

In her answer to the SOR, Applicant also constructively denied a delinquent medical debt of \$30, alleged at SOR ¶ 1.b. as unsatisfied as of April 29, 2010. Applicant's credit report of April 5, 2010, shows that the debt was placed in collection status in December 2009. (Item 4 at 1; Item 8 at 1.)

Applicant admitted the delinquent medical debts alleged at SOR ¶¶ 1.d., 1.e., and 1.f. In her personal subject interview of September 24, 2009, she claimed she was not aware of the debts and speculated that they arose from a clerical mistake that resulted in the failure of her health insurer to process and pay the claims. She told the investigator she was working with the health insurer to rectify the situation. In her March 30, 2010, response to DOHA interrogatories, Applicant stated she was continuing to dispute the debts with the insurance provider. In her June 4, 2010, answer to the SOR, Applicant admitted the three delinquent debts and reported that she continued to dispute them. She failed to provide documentation to corroborate her statements that she had disputed the debts. (Item 4 at 2; Item 6 at 8; Item 7 at 7; Item 8.)

In her answer to the SOR, Applicant admitted she owed approximately \$20,000 in delinquent student loan debt. She stated that the debt, alleged at SOR ¶ 1.g., had been in repayment status for nine months. In March 2010, in response to DOHA interrogatories, she provided a statement from the creditor, dated February 6, 2010, identifying the amount of the debt as \$20,332. The creditor's statement also acknowledged that Applicant had authorized a monthly withdrawal from her account of \$165 in payment of the debt. (Item 4 at 2; Item 7 at 6.)

SOR ¶ 1.j. alleged that Applicant was 120 days past due in payments on an additional student loan of \$7,903 and owed \$844. In her answer to the SOR, Applicant denied this debt and stated that it had been consolidated with the \$20,000 student loan alleged at SOR ¶ 1.g. In her personal subject interview, Applicant explained that she had difficulties not entirely of her making in satisfying requirements for her college degree. Her advisor did not accept her internship report, which was the final requirement for her degree. Subsequently, Applicant was required to take an additional three-credit course to complete the degree. She did not learn until 2008 that the university was charging her for the course, which she had thought she was not required to pay for. In response to DOHA interrogatories, Applicant also stated that the \$7,903 student loan was combined with the student loan debts alleged at SOR ¶ 1.g. Additionally, she stated that she would go the university that claimed she owed the debt and seek clarification of her responsibility for paying the debt. Applicant failed to provide documentation to corroborate that the student loan debt alleged at SOR ¶ 1.j had been

consolidated with the student loan debts alleged at ¶ 1.g. (Item 1; Item 4; Item 6 at 8-9; Item 7 at 9-10.)

Applicant admitted the debts alleged at SOR ¶¶ 1.h., 1.i., and 1.k. On her personal financial statement, she identified the debt at ¶ 1.h. as a financial obligation and indicated she was paying the creditor \$30 a month on the debt. In her personal subject interview, she told the investigator that, since March 2009, she had paid the creditor identified at SOR ¶ 1.i. \$20 a month on the debt, and she produced receipts to corroborate her statement. She also told the investigator that the debt identified at SOR ¶ 1.k. arose between 2004 and 2007, that she paid the creditor \$50 a month for several months and then fell into delinquency on the debt, and that she was currently paying the creditor \$25 a month. In response to DOHA interrogatories, however, she stated she was unable to continue paying the delinquent debts identified at SOR ¶¶ 1.i. and 1.k. because she was paying her student loan debts. She stated that she intended to make payments on those debts again at some time in the future. (Item 6 at 8-9; Item 7 at 3, 8.)

In her personal subject interview, Applicant acknowledged that she was inexperienced in managing her money and her credit. She stated that she did not keep track of her debts during her college years and was naïve in thinking she would obtain a good job after college that would enable her to quickly pay off her debts. (Item 6 at 9.)

In response to DOHA interrogatories, Applicant provided a pay slip from her employer and a personal financial statement. Applicant's pay slip established that her net monthly income is \$2,176.84. In her personal financial statement, Applicant listed the following fixed monthly expenses: rent, \$800; groceries, \$250; clothing and personal items, \$50; utilities, \$168; car expenses, \$213.15; life and other insurance, \$2.16; medical expenses, \$94; and miscellaneous, \$71. Applicant's fixed monthly expenses total \$1,648.31. (Item 7 at 3-4.)

In her personal financial statement, Applicant listed a monthly payment of \$30 on the account listed at SOR ¶ 1.h. She also listed a monthly payment of \$165 to the student loan creditor identified at SOR ¶ 1.g. Additionally, she indicated she paid \$400 a month on a debt to an automobile creditor. Applicant's financial statement shows a negative monthly remainder of \$66.47. (Item 7 at 3.)

Under the Remarks section of her personal financial statement, Applicant wrote: "Parental assistance when necessary." The record does not establish that Applicant has sought or received financial credit counseling. (Item 7 at 3.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine

whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching 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 in seeking 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 or 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

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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt and the record reflects that she did not satisfy her debts. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “the conditions that resulted in the financial problem were largely beyond the person's control, [such as] loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence 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” (AG ¶ 20(c)); that “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)); or that “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.” (AG ¶ 20(e)).³

³A sixth possible mitigating circumstance applies when “the affluence resulted from a legal source of income.” (AG ¶ 20(f)). This mitigating circumstance is not relevant in this case.

Applicant has a history of financial delinquencies which are recent, ongoing, and occurred under circumstances that are likely to recur. She has been steadily employed by her current employer since December 2008, and her unresolved financial delinquencies are not the result of conditions or circumstances beyond her control. She provided some evidence that she had made monthly payments of \$165 on her \$20,000 student loan delinquency, alleged at SOR ¶ 1.g, and the credit card debt alleged at SOR ¶ 1.h. However, Applicant's personal financial statement listed these payments and also reflected a monthly net deficit of \$66.47, suggesting ongoing financial instability and making it unlikely that she would be able to satisfy these and the delinquent debts alleged at SOR ¶¶ 1.i. and 1.k., which she said she would satisfy at some unspecified future time. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

While Applicant constructively denied the medical debts alleged at SOR ¶¶ 1.a., 1.b., and 1.c., the three debts were listed on Applicant's April 2010 credit report. In response to DOHA interrogatories, she stated she had disputed the debts alleged at SOR ¶¶ 1.a. and 1.c., but she failed to provide documentation to corroborate the disputes. She admitted the debts alleged at SOR ¶¶ 1.d., 1.e., and 1.f. and stated she was also disputing those debts. However, she also failed to provide documentation to corroborate the disputes.

Applicant also claimed that the student financial aid debt alleged at SOR ¶ 1.j. had been consolidated into the student financial aid debt alleged at SOR ¶ 1.g. However, the two debts were listed separately on her April 2010 credit report, and Applicant failed to provide documentation establishing that the debts had been combined.

Applicant acknowledged her inexperience in managing her finances and satisfying her debts. However, the record does not reflect that she has sought consumer credit counseling that could provide her with strategies for resolving her delinquent debts. The record suggests that Applicant relies on parental assistance in paying her debts. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply in mitigation to the security concerns raised by the facts in this case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant is a mature adult who has a college education. She has no dependents and has been steadily employed since December 2008. Despite a steady income, Applicant has failed to satisfy debts which arose during her student years, and her financial statement suggests that she is financially overextended. The record does not reflect that she has sought consumer credit counseling. Her current financial instability raises security concerns about her judgment and reliability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies. If her employer concurs, Applicant can reapply for a security clearance one year after the date that this decision becomes final. If she wishes, she can produce new evidence that addresses the Government's current 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. through 1.k.: 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.

Joan Caton Anthony
Administrative Judge