



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



In the matter of:)
)
-----) ISCR Case No. 09-07976
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

HOWE, Philip S., Administrative Judge:

On August 2, 2009, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On August 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 8, 2010. Applicant requested her case be decided on the written record in lieu of a hearing.

On October 4, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant on October 5, 2010. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 8, 2010. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on November 11, 2010. I received the case assignment on November 16, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.c and 1.f. She admitted the allegations in Subparagraphs 1.a, 1.b, 1.d, 1.e, 1.g, 1.h, and 1.i. (Items 2-6)

Applicant is 61 years old, married, and has two adult children. She works for a defense contractor. She has had a security clearance since November 1990. Her husband is ill and currently in hospice care. Applicant is the sole wage earner in her family. (Item 5, SOR Answer, FORM Response)

Applicant was on disability from April to August 2008 for a back problem. In December 2008 her employer implemented an extended holiday work schedule, closing the company offices and then closing its plant every other Friday. Applicant did not submit information showing how long the term of closing was in 2009. In October 2009 Applicant was subject to accelerated state income tax withholding. She contended these actions affected her income. She did not provide salary figures showing the financial effect on her income of any of these company and state actions. Applicant also cited as a reason for her financial difficulties the facts that one son and his family lived with her for five years (2001 to 2006), during which time she purchased a car for him. She is obligated to pay that auto loan. Her older son was out of prison for 18 months, during which he also lived with Applicant. She purchased a vehicle for that son on which debt she continues to pay because her son went back to prison. (Item 5, SOR Answer, FORM Response)

Applicant has nine delinquent debts listed in the SOR. They total \$96,078. Applicant enrolled in a debt repayment plan in February 2009. She did not provide a copy of the agreement with that company showing the amount of money she was to pay them each month for use in settling her debts or the plan's fees. Applicant's documents showed she was in a 48-month plan starting in February 2009. Her financial statement of October 29, 2010, attached to her FORM Response, shows her net income as \$4,624 and her monthly expenses as \$7,987 (my addition of her expenses results in a total amount of \$7,886, which I take to be the correct amount). Applicant does not explain in any of her documents how she can spend \$3,262 more than she earns monthly. Her monthly payments to the debt plan are listed in the financial statement as \$1,208. From February 2009 to the present her payments at that rate would total \$25,368. Applicant did not show any evidence that she made those payments. (Answer and FORM Response)

Applicant's Answer and FORM Response claim she settled four debts. She does not present any documents to show payments were made on those settlements. The total of the settlements is \$2,970. The first three settlement letters are dated August 26, 2010, and the fourth letter is dated August 2, 2010. The fourth paragraph of the first three letters states that if Applicant is unable to "meet any of the terms of this settlement (for example you are unable to make an agreed upon payment) you are responsible for notifying the creditor/collector on this account." These letters do not state the terms of the settlement or the account numbers listed in the three credit reports in the file. The account numbers listed in each letter do not relate to the account numbers on the debts listed in the SOR and in the credit reports. The amounts of the debts on a chart submitted as part of Applicant's Response list creditors and amounts that are not the same as those listed in the SOR. Applicant did not submit any documents showing which SOR debts were included in her debt repayment program and coordinate the account numbers. The burden of proof was on her to do so. Applicant also did not explain why she paid \$25,368 over a 21 month period to her debt settlement company yet only \$2,970 was settled. (Items 6-8, Answer, FORM Response)

Applicant's nine delinquent debts were all owed to credit card companies or banks. These accounts were opened between February 1995 and March 2008. They were reported delinquent between August 2009 and July 2010, according to the dates in the three credit reports dated from August 2009, November 2009, and August 2010. (Items 6-8)

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 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 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 1995 to the present, Applicant accumulated nine delinquent debts that remain unpaid or unresolved. These debts total \$96,078. Applicant showed a pattern of incurring debt she could not repay with her income.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Those conditions are:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

The debts are currently owed. The expenditures are part of a pattern of spending exhibited in Applicant's credit records. There were no unusual circumstances shown that are not likely to recur. AG ¶ 20 (a) does not apply.

Applicant's financial problems were not beyond her control. She made the decision to purchase each son a vehicle and remains obligated on those debts. Money used to pay those debts could have been used to pay the SOR debts. Applicant attempted to show that her 2008 four-month disability, her company's work schedule changes in 2009, and the state government's increased withholding affected her income, preventing her from paying her debts. But Applicant made only assertions not supported by objective financial facts and calculations. Her husband's unfortunate medical condition first occurred in 1992, so Applicant has had 18 years to arrange her finances to accommodate her husband's disability. Through all of this time she spent

money she could not repay. She did not act responsibly under those circumstances. AG ¶ 20 (b) does not apply.

Applicant enrolled in a debt settlement program in February 2009. She did not show there was any financial counseling included in the program. She has not shown by any evidence that her problem is under control. Applicant did not state the amount of money she paid to the debt settlement program, but her October 2010 financial statement she submitted showed a \$1,208 monthly payment. Making that payment for 21 months means she paid the program \$25,368. Yet the debt settlement program only settled \$2,970 worth of debts between February 2009 and August 2010. Applicant did not submit any proof the settlement payments were made. Nor did she explain how she could afford to spend \$3,262 more than she earns each month as her October 2010 income/expense statement shows. Applicant's documents and financial figures are not credible or persuasive. She failed to present a logical mathematical report on her finances at the present time. She did not show that she paid her debts in this plan. Applicant failed to show she made a good-faith effort to resolve her delinquent debt. She failed to meet her burden of proof. AG ¶ 20 (c) and (d) do not apply.

Applicant did not offer any basis to dispute any of the SOR-listed debts. AG ¶ 20 (e) does not apply.

There is no evidence of any affluence being a factor in this case. Therefore, AG ¶ 20 (f) does 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 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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. The actions she took in February 2009 to resolve her debts are not efficacious. The evidence she submitted is not coordinated as to account numbers with the list of debts in the SOR that are of a security concern. The magnitude of her delinquent debts and the lack of substantial progress in resolving them, leave her vulnerable to pressure, coercion, exploitation, or duress. Applicant displayed a lack of good judgment incurring the debts and not devising a realistic and credible plan to resolve them. Her failure to present documents that directly link each delinquent debt to action taken as part of her debt repayment plan, or show that any alleged debts were repaid undermines her credibility about her debts.

I read through each of the three credit reports attempting to connect Applicant's Answer and Response assertions to the SOR debts. I read every document Applicant submitted and gave each one careful consideration. My conclusion was the documents submitted did not present a comprehensive and cohesive explanation of efforts Applicant took to resolve her debts. I did not find her Answer and Response to be credible or persuasive on the issues. Her information does not show what debts she paid or if they are on the SOR.

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 did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

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
Subparagraph 1.a to 1.i:	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.

PHILIP S. HOWE
Administrative Judge