



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



In the matter of:)
)
) ISCR Case: 09-08295
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

June 22, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On June 22, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On July 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On September 2, 2010, Applicant filed an answer to the SOR. On October 6, 2010, she re-filed her answer and requested the case be decided on the written record in lieu of a hearing. On November 17, 2010, Department Counsel prepared a File of

Relevant Material (FORM) containing nine Items and mailed Applicant a complete copy on November 20, 2010. Applicant received the FORM on December 1, 2010, and had 30 days from its receipt to file objections and submit additional information. Applicant filed additional documents that I marked as Applicant Exhibits 1 through 20 and admitted into the record without objection from Department Counsel. On January 1, 2011, DOHA assigned the case to me.

After reviewing Applicant's answer that contained a detailed spreadsheet of the status of the SOR-listed debts, I requested that Applicant submit documents to support her assertions that she paid or was paying numerous debts. I gave her until March 28, 2011, to tender said information. On June 1, 2011, Department Counsel informed me that Applicant did not submit any information.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1a through 1.y. Her admissions, including her responses to DOHA interrogatories, are incorporated in the following findings.

Applicant is 44 years old. She is married and has three adult children from a previous marriage. She earned a Master's degree in Management of Information Systems in August 2008 and earned a Bachelor's degree in Computer Information Systems in November 2004. In July 2008, she began a position as a configuration analyst for a defense contractor.

After submitting an e-QIP in June 2009, Applicant met with a government investigator in September 2009 to discuss information in it, including her delinquent debts, judgments, and a 2003 bankruptcy. During the interview, she indicated that approximately \$236,800 of debt, including a mortgage of \$227,000, was discharged in July 2003. She noted that she intended to resolve numerous debts. She indicated that she accumulated debt prior to November 2008 because she supported too many family members. After November 2008, she suffered a physical injury and was on disability for three months, which further exacerbated her financial problems. She told the investigator that she intended to enroll in a financial management program to address her debts. (Item 7.)

In April 2010, Applicant responded to Interrogatories inquiring into the status of 24 debts that totaled about \$40,000. In it, she included a spreadsheet for 18 of the 24 debts, noting status and current balances. She indicated that many of the debts were paid, or being paid via installments. She noted that documentary evidence, such as bank statements and copies of checks, were attached to the Interrogatories but they were not. She agreed to provide proof of payment for some debts. She submitted copies of five checks that totaled about \$2,000; however, it is not clear to which debts those payments relate. She did not submit copies of bank statements or other documents to support her assertions that many debts were being paid monthly. (Item 7.)

Based on credit bureau reports (CBR) from February and May 2010, the SOR alleged the 2003 bankruptcy and 24 delinquent debts that totaled about \$38,000. In her August 2010 answer to the SOR (that was received in September 2010), Applicant provided a spreadsheet that included each SOR-listed debt. Again, she noted that many debts were being paid monthly or would be paid in September 2010. Attached to that answer was information previously submitted and proof of the resolution of an \$85 debt, not previously submitted. (Item 4.) In response to the FORM, she again provided information previously submitted, but also included proof of payment for other debts. To-date it appears from the documents in the case file that she has paid approximately \$5,000 of the \$38,000 of delinquent debts.¹

Applicant did not provide evidence that she has obtained credit counseling. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

Policies

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

Directive ¶ E3.1.14 requires the Government to 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

¹Applicant submitted exhibits that document payments on the debts listed in ¶¶ 1.i, 1.m and 1.q. Throughout this process, she submitted other documents that indicate payments made on debts, but said documents do not clearly identify the specific SOR-listed debts to which the documents relate.

ultimate burden of persuasion as to obtaining a favorable clearance decision.” 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.”

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.

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

In July 2003, Applicant had approximately \$238,000 of delinquent debt discharged through bankruptcy. Since then, she has accumulated about \$38,000 in delinquent debts, of which approximately \$33,000 remains unresolved. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 sets forth conditions that could mitigate financial security concerns:

(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.

Because Applicant's delinquent debts are ongoing and unresolved, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply.

Although some of Applicant's debts may be the consequence of family and health issues, which were situations beyond her control, she did not submit sufficient evidence documenting her attempts to responsibly manage the debts while they accrued, as required under AG ¶ 20(b). Applicant established no mitigation under AG ¶ 20(c) because she did not provide evidence of credit counseling or documentation that \$33,000 of her debt is being resolved and is under control. She provided evidence that she paid at least \$5,000 of her debt, warranting a limited application of AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(e). AG ¶ 20(f) is not applicable.

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). They include the following:

(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, educated individual, who has worked for a defense contractor since July 2008. In September 2009, she learned of the Government's concerns relating to her financial problems and delinquent debts. In April 2010, she completed interrogatories seeking information regarding the resolution of said debts. In July 2010, she received an SOR that notified her that approximately \$38,000 of delinquent debt and a previous bankruptcy raised security concerns. In November 2010, the Government filed the FORM. In March 2011, she was given another opportunity to submit evidence to support her numerous statements that she had paid or was paying many of her delinquent debts. For at least 18 months, she has been on notice that the delinquent debts were potentially jeopardizing her employment. Despite that knowledge and opportunities to do so, she did not provide documentary proof to corroborate the statements in her answer or interrogatories that many debts were paid or being resolved. The record contains insufficient other evidence about her character, trustworthiness, or responsibility to mitigate these concerns, or make their continuation less likely.

Overall, the record evidence creates sufficient doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j through 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n through 1.o:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r through 1.y:	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.

SHARI DAM
Administrative Judge