



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-08744
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O’Neil, Esq., Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 2, 2010, and August 30, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s written case on September 29, 2010. A complete copy of

the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received a copy of the FORM on October 8, 2010. She answered the FORM on November 18, 2010. On November 22, 2010, she sent a revised response to the FORM and indicated she sent the previous version by mistake. The second submission contains the same information as the first submission with some added information that is not in the first submission. Applicant did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to Applicant's response, and it is admitted. The case was assigned to me on November 18, 2010.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. She is applying for a security clearance for the first time. Her Questionnaire for Sensitive Positions (SF 86), submitted in February 2009, listed that she has worked for her current employer since December 2008, she has a bachelor's degree that was awarded in 2004, and she has never been married. She has a young child that was born after the SF 86 was submitted.¹

The SOR alleges eight delinquent debts with balances totaling about \$13,872. Applicant admitted owing all the debts alleged in the SOR but stated the balances on several of the debts were less than what was alleged in the SOR. She also submitted additional evidence in support of her application for a security clearance. Except as specifically stated below, the allegations were established through credit reports and Applicant's admissions.

Applicant incurred debt while she was in college and the first few years in the workforce. Her SF 86 shows that she was employed from June 2004 through August 2008 and unemployed September 2008 through November 2008. She began to address her financial issues after she obtained her current job and realized that her finances could have an impact on her security clearance and ability to maintain employment. She paid or settled a few small debts that were not alleged in the SOR (\$175, \$64, and \$32).²

Applicant stated that she made payment arrangements with several of the creditors and started payment plans. She provided documentation in her response to DOHA interrogatories that she made the first payment of \$50 toward the \$248 utility debt alleged in SOR ¶ 1.a in February 2010. In her response to the SOR, she stated the balance on the debt was \$173. She did not provide documentation of any additional payments.³

¹ Items 3, 7; Applicant's response to FORM.

² Items 3, 8-13; Applicant's response to FORM.

³ Items 8-10.

Applicant provided documentation that she paid \$75 toward the \$214 debt alleged in SOR ¶ 1.b in February 2010. She stated in her response to the SOR that the balance on the debt was \$64. She did not provide documentation of additional payments.⁴

SOR ¶ 1.e alleges a delinquent debt of \$397 to a utility company. Applicant provided documentation that she paid \$50 to the creditor in February 2010. She stated in her response to the SOR that the balance on the debt was \$272. She did not provide documentation of additional payments.⁵

Applicant provided documentation that she paid \$50 toward the \$254 debt alleged in SOR ¶ 1.g in February 2010. She stated in her response to the SOR that the balance on the debt was \$204.⁶

Applicant contracted with a debt management company in May 2010 to assist in resolving her larger debts. She stated that she would pay her smaller debts on her own. Applicant enrolled five debts, totaling about \$15,000, in the company's debt settlement program (DSP). The company charges a fee for their services of 15% of the "total debt and/or the difference saved upon settlement," plus a monthly "processing fee" of \$45. There is also a monthly service charge of \$9.85. Applicant agreed to pay \$450 in June 2010 and \$261 each month for an estimated 36 months thereafter into an account. After collecting their fees, the company would negotiate settlements with her creditors and pay the settlements out of the accrued funds. The specific debts are not listed on the contract with the debt management company. Applicant indicated the debts alleged in SOR ¶¶ 1.c, 1.d, 1.f. and 1.h, which total about \$12,759, were enrolled in the DSP. Applicant authorized the company to debit the funds from her bank account. She did not provide proof that the funds were actually paid into the DSP account.⁷

There is no evidence that Applicant received financial counseling other than anything that may have been provided by the debt management company. She has about \$37,000 in student loans. A February 2009 credit report listed the loans in deferment. Credit reports from January and September 2010 show that she pays \$227 per month toward the loans. Applicant stated that financial responsibility is now important to her. She stated that she "just had a child and [she is] more determined than ever to fix [her] credit because [she] would like to buy a house in the near future, to be a role model for her [child] and quite frankly being a single mother will be hard enough without having financial problems as well."⁸

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Item 3; Applicant's response to FORM.

⁸ Items 3, 8-13; Applicant's response to FORM.

Policies

When evaluating an applicant's suitability for a security clearance, the 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 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, administrative judges apply 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.

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 the applicant or proven by Department Counsel." The applicant 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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 was unemployed from September 2008 through November 2008. Her unemployment qualifies as a condition that was outside her control. However, that

period of unemployment does not justify the amount of Applicant's delinquent debts. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant began to address her financial issues after she realized that her finances could have an impact on her security clearance and ability to maintain employment. She paid or settled a few small debts that were not alleged in the SOR. She made payment arrangements with several of her creditors, and she provided proof that she made payments totaling \$225 to four creditors in February 2010. She did not provide proof of any additional payments. She contracted with a debt management company in May 2010, but she did not submit proof that she made any of the payments into the company's debt settlement program. Applicant's financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. I find that there is some mitigation under 20(b), 20(c), and 20(d). However, I have unanswered questions and concerns about Applicant's finances and her suitability for a security clearance. The limited evidence in mitigation is insufficient for a determination that Applicant's finances are in order. In sum, I conclude that financial concerns remain despite the presence of some mitigation.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. The limited information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance. Concerns remain about her judgment, reliability, and trustworthiness.

