



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



In the matter of:)
)
) ISCR Case No. 10-00201
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

08/03/2012

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.

Statement of the Case

On January 9, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The actions were 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 on February 21, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2012. DOHA issued a notice of hearing on June 5, 2012. I convened the hearing as scheduled on

June 28, 2012. The Government offered Exhibits (GE) 1 through 6, and they were admitted into evidence without objection. Applicant offered Exhibits (AE) A through F, and they were admitted into evidence without objection. The record was held open to allow Applicant to submit additional documents, which she did. AE G was offered and Department Counsel indicated she did not object. Department Counsel's memorandum is marked as Hearing Exhibit (HE) I.¹ The exhibit was admitted into evidence and the record closed. DOHA received the hearing transcript (Tr.) on July 10, 2012.

Findings of Fact

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

Applicant is 39 years old. She has worked for the same company since 2007. She is a logistics supervisor. She is a high school graduate and has earned some college credits. She served in the Air Force from 1991 to 1995 and was honorably discharged in the pay grade of E-3. Applicant is divorced and has two children, ages 16 and 18 years old. Her eldest child is in college and is working.²

In 2000, Applicant and her husband divorced. She received \$600 in child support from 2000 to 2005. Sometime between 2005 and 2006 the child custody arrangements were modified and the parents shared custody so neither parent received child support. Each parent was responsible for supporting the children when they were in their custody. Applicant stated that the loss of child support payments impacted her finances.³

Applicant worked in retail from 1995 to 2006. She had periods of unemployment in 2003 and 2004; one period was for four months. Before working for her present employer, Applicant was employed by an insurance company for part of 2006 to part of 2007.⁴

Applicant admitted that she has struggled financially due to underemployment. She stated that she contacted credit counseling agencies, but most of her debt was already in collection and they would not help her consolidate the delinquent debt. She had four surgeries from September 2010 to October 2011. She was on short-term disability from July 2011 to October 2011. For the first four weeks of her short-term

¹ AE G consists of 4 pages. HE I consists of one page.

²Tr. 18-20.

³ Tr. 21-22.

⁴ Tr. 20-21.

disability she received her full income; the next four weeks she received 60% of her normal income, and the remaining time she received 40% of her normal income.⁵

Applicant stated that in 2009 she began paying two delinquent student loans and completed the payments in July 2010. Her loans were incurred when she attended school in 2003 and 2004. She made a couple payments on them when they were due, but they became delinquent in 2006. She is disputing the debt in SOR ¶ 1.i because she did not attend school during the semester she is being charged. She did not provide documents to support her dispute. She stated she began voluntarily repaying her student loans in July 2009. She indicated in December 2009, her wages were then garnished for \$500 a month to repay her student loans and for two years her income tax refunds were automatically applied to the debts.⁶

In 2008, Applicant applied for a security clearance. The Government requested she complete financial interrogatories. Due to a pending move within her company, she missed the deadline and her clearance was denied. She admitted she was aware in 2008 that her finances were a security concern.⁷

In March 2010, in response to Government interrogatories, Applicant indicated she had begun a self-guided debt management program to repay her creditors. She stated that she had contacted all of her creditors via phone and letter. Her intention was to start paying the debts with smaller balances until her debts were paid off. She analyzed her household budget and looked for ways to reduce her expenses. In response to the interrogatories she provided unsigned copies of letters to her creditors stating she would send each \$10 every month and would continually increase the amount as her total overall debt decreased, until the debt was paid.⁸ When questioned at her hearing if she actually sent the letters and the \$10 payment, she indicated she did not. She stated she contacted the creditors via telephone and was told the payments would be insufficient. She never sent any payments to the creditors.⁹

Applicant stated she again attempted to resolve her delinquent debts on her own from October 2011 to February 2012. She stated she paid the debts in SOR ¶¶ 1.f (\$30), 1.h (\$160) and a debt that is not alleged in the SOR.¹⁰ Applicant stated the debt

⁵ Tr. 22-24, 28-30.

⁶ Tr. 31, 33-38, 56.

⁷ Tr. 32-33.

⁸ GE 3.

⁹ Tr. 24-27, 38-45.

¹⁰ AE A, B, C.

in SOR ¶ 1.f is a duplicate of SOR ¶ 1.t. Applicant settled the debt alleged in SOR ¶ 1.s (\$78) for \$39, on November 11, 2011, but did not have a receipt.¹¹

In February 2012, Applicant was feeling stressed and frustrated. She met with credit counselors and a lawyer. They recommended that she file Chapter 7 bankruptcy. She heeded the advice and filed in March 2012. She has attended the requisite financial counseling course. All of the delinquent debts alleged in the SOR are included in the bankruptcy except SOR ¶¶ 1.h, 1.m, 1.s and 1.t. Two additional debts not alleged are also included in the bankruptcy (balances of \$230 and \$361). Applicant's Schedule F-Creditors holding unsecured nonpriority claims totals \$35,629.¹² Applicant believes by filing Chapter 7 bankruptcy she will get a fresh start and reduce her stress. She plans on attending some financial savings programs offered in the community.¹³

Applicant has approximately \$60 remaining each month after she pays her expenses. She does not have any open credit cards. She admitted her car payment has been late once in the past six months. She has about \$10,000 to \$12,000 in a 401k retirement account. She has no other savings. She stated she has been following a budget for the past three to four months. The budget she provided lacks details. She believes in the past four months she has changed her ways and is proactive regarding her budget and ability to save. She believes she has a game plan set for her future. She stated she is going to budgeting class twice a month. Applicant's bankruptcy is still pending and her debts have not yet been discharged.¹⁴

Applicant provided character letters that reflect she is a strong performer at work. She has three subordinates under her direct supervision and provides training and leadership to over 50 subordinates at four locations. Applicant's supervisor describes her as sharp, innovative and a quick learner with proven abilities to adapt quickly to new challenges. She is competent, motivated, dedicated, dependable, reliable, and well-disciplined in her work habits. Others commented on her professionalism, intelligence, and ability to manage her time. She is considered an invaluable asset. She is organized and leads by example. She is meticulous and focused on the details of her work.¹⁵

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 list potentially

¹¹ Tr. 24-27, 41-45.

¹² Tr. 25-27; AE G.

¹³ Tr. 25-27, 46-74.

¹⁴ Tr. 67-72, 75.

¹⁵ AE F.

disqualifying conditions and mitigating conditions, which are 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. 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 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 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 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 the following two are potentially applicable:

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

Applicant has numerous delinquent debts that she was unable or unwilling to pay or resolve. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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 action to resolve the issue.

Applicant's behavior is recent because her delinquent debts have not been paid, resolved, or discharged in bankruptcy at this time. Based on Applicant's current financial status, I am unable to conclude that her financial problems are unlikely to recur in the future. I cannot apply AG ¶ 20(a).

Applicant had periods of underemployment and unemployment. She had some medical issues and her income was reduced when she received short-term disability benefits. These conditions were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been steadily employed with the same employer since 2007. She applied for a security clearance in 2008 and became aware at that time that her finances were a security concern. Applicant has not been proactive in attempting to resolve her delinquent debts. She paid a couple small debts, but did not create a realistic budget until a few months ago. She did not file Chapter 7 bankruptcy until after she received the SOR. I find AG ¶ 20(b) partially applies because some of the conditions that resulted in her financial problems were beyond her control. However, there is insufficient evidence to conclude Applicant acted responsibly under the circumstances.

Applicant completed the required financial counseling when filing for bankruptcy. She stated she is taking a budget class and has been following a budget for three to four months. She stated she has reduced her spending. She stated that after she pays her monthly expenses she has \$60 remaining. At the time of her hearing, her debts had not been discharged in bankruptcy. At this juncture, it is too early to conclude that there are clear indications that Applicant's financial problems are under control even if her debts are eventually discharged. There is insufficient evidence to conclude she made good-faith efforts to repay her overdue creditors. I find AG ¶ 20(c) partially applies because she received financial counseling and is attending a budget class. I find AG ¶ 20(d) does not apply.

Applicant disputes the debt in SOR ¶ 1.i but did not provide documented proof to show the actions she has taken to dispute or resolve the debt. I find AG ¶ 20(e) 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 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a 39-year-old single mother. She served in the Air Force and was honorably discharged. She has been employed by her present employer since 2007 and is considered a valued employee. Applicant has had financial problems since 2000. She has been accumulating delinquent debt for many years. She had periods of underemployment and periods of unemployment. She has been aware since 2008 that her finances were a security concern. She did not take a proactive approach to resolve her delinquent debt and managing her finances when she initially became aware they were a security concern. She stated she has had limited resources in the past to resolve her delinquent debts. She recently filed Chapter 7 bankruptcy after receiving the SOR. Her debts are not yet discharged. She indicated in the past three to four months she has been following a budget. She has \$60 remaining at the end of each month after paying her expenses. It is too soon to conclude that Applicant's finances are no longer a security concern. She does not have a stable track record of managing her finances. Applicant has not met her burden of persuasion. Overall, 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 Financial Considerations guideline.

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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.r:	Against Applicant
Subparagraphs 1.s-1.t:	For Applicant
Subparagraphs 1.u-1.v:	Against Applicant
Subparagraph 1.w:	For 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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge