



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



In the matter of:)
)
-----) ISCR Case No. 10-00261
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

October 29, 2010

Decision

HOWE, Philip S., Administrative Judge:

On September 23, 2009, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On May 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to 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 revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on May 27, 2010, and June 6, 2010. Applicant requested her case be decided on the written record in lieu of a hearing.

On July 20, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 26, 2010. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on August 25, 2010. I received the case assignment on October 12, 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 admitted all allegations in the SOR. She submitted an Answer containing information she wanted considered in her case. (Items 1, 3)

Applicant is 45 years old. She is an accountant for a defense contractor. She is married and has two children, ages 21 and 20. One child is disabled, according to Applicant's answer. (Item 4)

Applicant has four delinquent debts listed in the SOR. These debts total \$98,756. Two debts related to a first and second mortgage on her house, delinquent since 2009. Another debt is a credit card with a balance owed of \$966 dating from 2007. She also owes a student loan on her oldest child's tuition in the amount of \$8,515. Applicant states she did not realize the loan was delinquent because her child was supposed to pay it but did not. Applicant wants to extend the term of the loan and make payments. She did not submit any proof she was paying the loan. This loan dates from 2007. (Items 4 to 7)

Applicant submitted a personal financial statement in March 2010. She and her husband net \$6,300 monthly. Their monthly expenses without the mortgage payments and other debt payments are \$2,510. They are not paying on their first and second mortgages. They retained an attorney in May 2009 to help them fight the foreclosure action by their lending banks. Applicant did not submit any information on the current status of their legal action against the lending banks. The debt owed on both mortgages is \$293,000. Applicant has a 10-year adjustable mortgage on the property. Applicant's Answer and the interrogatory response on March 10, 2010, claim her expenses were too great for her to keep paying her mortgages. She sought a modification of the mortgage from her lender in July 2008, but failed to complete the documents properly, and was denied a modification by the lender in December 2008. Applicant also claims she was told by the first mortgage holder not to make any payments pending the modification, but now admits she was wrongly advised. She included a May 1, 2009, letter to her bank stating this series of events. After the denial of modification, Applicant hired the attorney on May 11, 2009. Her agreement provided a fee of \$1,500 as a down payment, then \$500 per month for seven months, and \$150 monthly for as long as the attorney works for Applicant. The record contains no additional information on her attorney's efforts to modify the mortgage. Applicant has not paid her mortgage

payments for the past two years. Her Answer states she will wait for court orders telling her to resume payments. (Items 3, 5)

Applicant's personal financial statement shows her expected mortgage payment on the first mortgage to be \$1,900 monthly. The expected payment on the second mortgage is \$414 monthly. Applicant's other debt payments include those made on three cars, a credit card, and two student loan payments. Her total monthly payments for these debts are \$3,450. Therefore, the net remainder from Applicant's income minus her monthly expenses and her monthly debt payments is \$330. Applicant does not disclose what she has done with the \$2,314 monthly she has not been paying on her two mortgages for the past two years. That amount, if saved regularly, would be nearly \$50,000 now. (Item 5)

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 2007 to the present, Applicant accumulated four delinquent debts, totaling \$98,756 that remain unpaid or unresolved. Applicant admitted she has not paid her first and second mortgages on her home for two years. AG ¶ 19 (a) and (c) apply.

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

- (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.

No mitigating condition applies. Applicant's debt problems are current and ongoing. They result from her voluntary actions of making purchases she could not afford. AG ¶ 20 (a) does not apply.

There is no condition beyond Applicant's control that caused her financial problems. AG ¶ 20 (b) does not apply.

Applicant did not submit any evidence of financial counseling. Her attorney is to represent her in legal action against her lenders, but there is no report of any resolution of Applicant's mortgage problems resulting from the attorney's legal work. There is no evidence the financial problems are under control. AG ¶ 20 (c) does not apply.

Applicant has not resolved her debt problems. She did not submit a response to the FORM in August 2010 when given the opportunity to do so. A response might have given a current status of her debt problems. Applicant's Answer in May 2010 does not provide evidence of current payments and resolution of any of the four debts listed in the SOR. Applicant only states future intentions to pay the credit card debt and the student loan. She states her mortgage payments will only resume when she receives orders from a court. Yet, there is no evidence any lawsuit has been initiated. Meanwhile, Applicant continues to live in her house for free. AG ¶ 20 (d) does not apply.

Applicant has not articulated a reasonable basis to dispute the legitimacy of the debts. Nor has she presented evidence for the basis of any dispute. Applicant only

states she is not paying her mortgages because she could not afford the payments on her 10-year adjustable rate mortgage. She had the opportunity to read the mortgages and loan agreement, then do the calculations on the mortgage payments required, before she signed the documents. Because she cannot afford the arrangement now is not a reasonable basis to dispute the debt. Therefore, AG ¶ 20 (e) does not apply.

There is no affluence resulting from a legal source of income presented in Applicant's Answer or response. Therefore, it is not an issue. 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. She has not taken any action to resolve these four delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Applicant's commitment to pay her debts refers only to future action; nothing is being done now to resolve these debts. Her inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on two of her delinquent debts during the past three years. She voluntarily ceased making her mortgage payments two years ago. Her financial problems are of her own making.

Overall, the record evidence leaves me with questions or substantial 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.d:	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