



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



In the matter of:)
)
) ISCR Case No. 10-00392
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

November 23, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

On May 6, 2005, Applicant submitted a Security Clearance Application (SF 86) to obtain a security clearance for her employment with the Department of Defense. (Item 5) She was granted an interim clearance. On May 6, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) for employment with a defense contractor. (Item 4) On May 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 2, 2010. She admitted all 20 allegations under Guideline F of delinquent debt totaling \$54,673.49. She elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on August 26, 2010. Applicant received a complete file of relevant material (FORM) on August 30, 2010, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. She did not provide any additional information in response to the FORM. The case was assigned to me on October 25, 2010.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 31 years old, divorced with no children, and a college graduate. She has been employed as a systems engineer for a defense contractor since December 2008. Prior to that, she worked as a systems engineer for the Department of Defense from April 2005 until October 2007. (Item 4) In a February 22, 2010 Response to Interrogatories, Applicant listed her monthly salary as \$3,505.02, with monthly expenses of \$1,782, with a net monthly remainder of \$1,280.02. (Item 6 at 5) She also lists some periods of unemployment prior to and after working for the Department of Defense. (Item 4)

Credit reports (Item 7, credit report, dated July 28, 2010; Item 8, credit report, dated April 28, 2010; Item 9 and Item 10, credit reports, dated November 25, 2009; Item 11, credit report, dated May 15, 2009, and Item 12, credit report, dated August 27, 2005) show delinquent debts in excess of \$54,000. These delinquent accounts include credit card debts (SOR 1.a to 1.e, 1.g to 1.k, 1.r to 1.t), and student loans (SOR 1.f and 1.l to 1.q).

In a May 2009 interview with security investigators, Applicant acknowledged her credit card and student loan debts. She stated that most of her non-student loans debts arose during her approximately 18 month marriage when she and her husband used credit cards to pay for their living expenses. When she left the abusive marriage, she was not sure of the amount of their credit card debts. She admitted the student loans but did not agree on the amount owed. She noted that she was paying \$250 monthly on one of the student loans under a payment plan. She did not present any documentation about the payment plan or payments made under the plan. In her February 22, 2010 Response to Interrogatories, she denied knowledge of some of the debts. (Item 6, at 7-11) However, she admitted all of the debts as listed in the SOR. (Item 3)

In an October 2009 interview with security investigators, Applicant stated she contacted some of her creditors to set-up payment plans. She was able to set up three payment plans with creditors that were willing to work with her. She claimed she has a plan with Midland and Portfolio Collection agencies. She consolidated most of her student loans and is paying \$260 by automatic deduction on the consolidated loan. She

has also worked overtime for additional income. Applicant did not present any documentation to verify agreed payment plans or payments made on any of her debts. (Item 6 at 12-14)

In her February 22, 2010 Response to Interrogatories, Applicant acknowledged that she had not contacted nine of her credit card creditors, that she has no knowledge of one debt, and is paying one debt. She stated that six of her student loans have been consolidated into one loan on which she is making \$200 monthly payments. She also stated that she is paying \$260 a month on another student loan account, that the account has been rehabilitated, turned over to another collection agency, and the monthly payments reduced. She stated she is current with this account. She stated she is paying another account. Applicant presented no documentation to verify payment plans, or payments made. She also stated that some accounts may be duplicates of other accounts now in collection but presented no information to verify this claim. (Item 6 at 12-14).

Applicant has failed to present documentation showing she has taken or intends to take any action to implement her plan to resolve or pay her delinquent debts. She presented no documentation on debt payments. She did state that her plan is to concentrate on paying her student loans first, but she did not present any documentation to verify the payments she has made on these accounts. She has substantial discretionary funds on a monthly basis but provided no information on how those funds are utilized or can be or will be utilized to resolve her delinquent debts.

Policy

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 must be considered 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.

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 applicant or proven by Department Counsel. . . .” The Applicant 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.

Analysis

Financial Considerations

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, 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant’s delinquent debts listed in credit reports and admitted by Applicant raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). The number and nature of the debts, over 20 debts from credit cards and student loans, establishes a history and unwillingness to pay debts.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under

financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government.

I considered Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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); and FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) and the individual acted responsibly under the circumstances). These mitigating conditions do not apply. Applicant incurred delinquent debt during a failed marriage and by using student loans to pursue a college degree. There is no indication that the debts incurred during her failed marriage were under such circumstances that the debts will not recur. In fact, it appears the debts were mutually incurred by Applicant and her husband to cover their cost of living to include paying rent, food, and other expenses. The use of student loans to finance an education is reasonable and within the control of Applicant. Applicant contacted only some of her creditors. She has discretionary funds each month to pay delinquent debts but has not indicated that she is acting responsibly to use these funds to resolve her past financial obligations. Applicant claims she reached payment plans with some creditors, is paying other creditors, and some debts are duplicates. However, she presented no information, evidence, or documentation to verify her assertions. Without information from Applicant, it cannot be determined her financial problems are being resolved. With evidence of delinquent debt and no documentation to support reasonable management of her finances, it is obvious that her financial problems are not under control.

I considered FC MC ¶ 20(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). Applicant presented no information to indicate she received financial counseling. Even if she had received counseling, there is no indication her financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan. She has failed to establish such a meaningful track record.

Applicant stated she has a plan to pay her debts. However, she has not presented adequate evidence to show she implemented her plan. She has sufficient

income to meet her financial obligations and has two years of steady employment with a defense contractor. Applicant's lack of documented action to pay her debts is significant. She has not acted reasonably under the circumstances. Based on the delinquent debts presented by the Government in credit reports, which she acknowledges, Applicant has not acted responsibly towards her debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 has not established a meaningful track record of paying her delinquent debts. She has not provided sufficient credible documentary information to show she acted reasonably and responsibly to address her delinquent debts and resolve her financial problems, or even that she has a credible plan to resolve and pay her delinquent debts. Applicant has not demonstrated responsible management of her finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates she may not be concerned or responsible in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Eligibility for access to classified information is denied.

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.t: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for access to classified information. Access to classified information is denied.

THOMAS M. CREAN
Administrative Judge