



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



In the matter of:)
)
) ISCR Case No. 10-00610
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

February 14, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has an inability to satisfy her financial indebtedness. She currently has 12 delinquent debts totaling \$16,583, and has not satisfied any of her delinquent accounts. She has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 10, 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 revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the Statement of Reasons (SOR) in writing on July 11, 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 November 9, 2010. The Government's submission included Government Exhibits (GEs) 1 through 9. Applicant expressed no objection to the Government's submissions and they were admitted. A complete copy of the file of relevant material (FORM) was received by Applicant on November 15, 2010. She was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit any information in response to the FORM. The case was assigned to me on January 21, 2011.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor. She is married and has a 14-year old child. (GE 5.)

Applicant applied for a security clearance in 2008, but she received an unfavorable determination due to her financial problems in December 2008. As a result, she was laid off. At that time, she hired a credit counseling attorney to assist her with her credit, but terminated their service at the end of December 2008. In her adopted statement, she claims that she then began making payments to her creditors in a timely manner. (GE 5; GE 6.)

Applicant's security clearance application reflects no periods of unemployment during the past seven years. Applicant has often held several jobs at one time. (GE 5.) The SOR sets out 12 delinquent accounts that total \$16,583. In her Answer, Applicant admits to each debt. Her debts are as follows:

Applicant is indebted on a collections account for \$253, as alleged in SOR subparagraph 1.a. This debt has been delinquent since November 2005. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted on a medical collections account for \$102, as alleged in SOR subparagraph 1.b. This debt has been delinquent since October 2005. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted on a medical collections account for \$194, as alleged in SOR subparagraph 1.c. This debt has been delinquent since July 2005. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted on a medical collections account for \$188, as alleged in SOR subparagraph 1.d. This debt has been delinquent since July 2005. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted on a student loan collections account for \$452, as alleged in SOR subparagraph 1.e. This debt has been delinquent since April 2009. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted on a collections account for \$351, as alleged in SOR subparagraph 1.f. This debt has been delinquent since July 2007. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a collections account for \$151, as alleged in SOR subparagraph 1.g. This debt has been delinquent since March 2009. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a collections account for \$358, as alleged in SOR subparagraph 1.h. This debt has been delinquent since October 2005. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a medical collections account for \$12,852, as alleged in SOR subparagraph 1.i. This debt has been delinquent since June 2006. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a delinquent telecommunications account for \$96, as alleged in SOR subparagraph 1.j. This debt has been delinquent since June 2005. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a collections account for \$595, as alleged in SOR subparagraph 1.k. This debt has been delinquent since July 2006. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a collections account for \$990, as alleged in SOR subparagraph 1.l. This debt has been delinquent since November 2005. Applicant failed to offer evidence that she has contacted this creditor, made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant's financial statement, completed as part of her Answers to Interrogatories in April 2010, indicated that her household net income was approximately \$2,700 per month and that her monthly expenditures totaled \$6,400. She indicated she was operating at a monthly net remainder of \$400. However, her listed monthly net income is actually \$3,700 less than her monthly expenditures and indicates she is spending more each month than she is bringing in. She listed no savings or other assets. (GE 7.)

Applicant failed to submit any reference letters or work performance evaluations to support her character. She did provide documentation that she had satisfied a wage garnishment levied against her in the past by an unalleged creditor. (GE 7.)

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 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. 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, 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 as to 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, totaling \$16,583, from 2005 through the present time and she is unable to pay her obligations. Further, her financial problems have been ongoing since at least 2005, and she has demonstrated little effort to resolve these outstanding obligations. The evidence is sufficient to raise the above disqualifying conditions.

Five 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;
- (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 actions to resolve the issue.

The evidence does not show that Applicant has resolved any of the 12 debts alleged in the SOR. Her financial issues are recent and ongoing. She operates with a large monthly deficit and is unable to satisfy her delinquent accounts. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant debts were not caused by circumstances beyond her control. She failed to provide any evidence to support application of this mitigating condition. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. She has not submitted any evidence to establish she is addressing her debts in a responsible manner and she continues to operate with a monthly deficit. I am unable to make a determination that she acted responsibly under the circumstances.

Applicant's adopted statement indicated that for a short period in 2008, she sought financial counseling. However, she decided to stop the counseling after a short period of time, prior to the resolution of any of her debts. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve her delinquent debts. The record fails to establish that Applicant has contacted the creditors or made any other good faith efforts to repay her financial obligations. AG ¶ 20(d) is not applicable.

In her Answer to the SOR, Applicant admitted to each debt listed. She failed to present any evidence to show that she was in the process of disputing these debts formally with the creditors or that she had successfully disputed any of her debts in the past. AG ¶ 20(e) is inapplicable.

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 those guidelines, but some warrant additional comment. Applicant is 34-years old. She has been denied a security clearance, due to her financial situation, in the past. She is clearly aware of the need to be financially responsible. She has had ample opportunity to address her financial delinquencies, but has failed to do so.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations security concerns.

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.i:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge