



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



In the matter of:)	
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)	ISCR Case No. 10-00996
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

December 30, 2011

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on September 29, 2009. (Government Exhibit 1.) On February 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, which detailed 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 11, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 4, 2011. This case was assigned to me on April 8, 2011. DOHA issued a notice of hearing on May 5, 2011, and I convened the hearing as scheduled on May 26 and June 22, 2011. The Government offered Government Exhibits 1 through 4, which were

received without objection. Applicant testified on her own behalf. DOHA received the final transcript (TR) of the hearing on June 29, 2011.¹ Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 58, single, and a high school graduate. She is employed by a defense contractor and seeks a security clearance in connection with her employment in the defense industry.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits all of the allegations in the SOR. Those admissions are findings of fact. The SOR alleges, Applicant admits, and Government exhibits substantiate twelve delinquent debts totaling approximately \$10,895. The evidence shows that these debts began accumulating in 2008. (Government Exhibits 1 through 4; TR at 27.) The evidence also shows that Applicant knew, beginning in December 2009, that the Government was concerned about her delinquent debts. (Government Exhibit 2.) Applicant made minimal attempts to resolve the debts, as set forth below. (TR at 32.)

Applicant's current financial difficulties began in 2008, when she had surgery and a long-term relationship broke up. This left her in a difficult situation financially. Eventually, she quit her job and moved to be with her daughter. She eventually found employment and has been working ever since to get back on her feet financially. (Government Exhibit 2 at 12; TR at 25-26.)

1.a. through 1.g. These seven delinquent debts are owed to the same collection agent. According to Applicant, these are all medical debts related to surgery she underwent in 2008. The debts range from \$11 (1.e.) to \$1,200 (1.c.). Applicant testified that she tried to pay these debts over the telephone in 2010 and 2011, but the collection agent stated they did not have a record of Applicant's debts. Applicant did not follow up with the creditor or the credit reporting agencies in order to have these debts removed from her credit report. (TR at 26-31.)

1.h. Applicant admitted owing this delinquent medical debt for \$147. Applicant does not know which medical provider this debt concerns. In addition, the available documentary information in the file does not show a collection agency for Applicant to contact. (TR at 32-33.)

¹All citations in this Decision are to the transcript of the hearing held on June 22, 2011.

1.i. Applicant admitted owing this delinquent medical debt in the amount of \$210. She has not made any payments on this debt and has no current plans to make payments on this debt. (TR at 33-34.)

1.j. Applicant admitted owing this delinquent debt regarding a repossessed automobile in the amount of \$7,778. The automobile was repossessed in April 2008. Applicant had unsuccessful discussions with the creditor about a payment plan in October 2010. She has not paid this debt and has no current plans to pay this debt. (TR at 34-37.)

1.k. Applicant admits owing this delinquent debt for cable television service in the amount of \$263. Applicant has been unable to contact the collection agency to make a payment. (TR at 37-40.)

1.l. Applicant admitted owing this delinquent medical debt in the amount of \$83. She has not made any payments on this debt and has no current plans to make payments on this debt. (TR at 40.)

Applicant submitted evidence showing that she had paid three other debts that were not alleged in the SOR. These payments were made in September 2009 and January 2010. (Government Exhibit 2 at 14-16; TR at 31-32.) She submitted no evidence that any payments had been made since that time to other creditors.

Applicant testified that she is applying for higher level jobs that require a security clearance. If she is granted a clearance Applicant believes that she, "could clear up some of this stuff in six months or less." (TR at 49.)

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

Policies

Security clearance decisions are not made in a vacuum. 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 disqualifying conditions and mitigating conditions, which are to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant, by her own admission, has almost \$11,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties are of a longstanding nature. As stated above, she has paid off none of her alleged past-due debts. There is no evidence as to how she is going to pay her delinquent debts. It is Applicant's burden to submit evidence showing that her financial situation has improved. She has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that it can be mitigating where "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." Applicant left her job, had surgery, ended a long-term relationship and moved a great distance all in one year, 2008. However, she has done very little since then to resolve her debt situation, especially since she learned in December 2009 of the Government's concerns. This mitigating condition is minimally applicable to this case,

Applicant has not initiated a good-faith effort to pay off her creditors, or otherwise resolve the debts. There is no track record of her making payments for any period of time. Accordingly, AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is not applicable. In addition, given the fact that she is at least \$11,000.00 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

Finally, AG ¶ 20(e) states it can be mitigating where "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." Applicant stated that she has had problems with contacting creditors, or those she has contacted have stated they have

no record of her account. However, she did not substantiate these allegations with any evidence of actions taken, such as emails or other correspondence. Assuming her statements to be true, this mitigating condition is minimally applicable.

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. Applicant is under financial strain, and has been for several years. Her debt situation is not yet under control. Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is a high likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation at this time. If she is able to pay down her debts, or otherwise resolve them, she may be eligible for a clearance in the future. She is not eligible now.

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing her request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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. through 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge