



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



In the matter of:)
)
) ISCR Case No. 10-01204
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq.
For Applicant: *Pro se*

June 14, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. She admits having 11 debts that are in collection and together total over \$38,000. She has been on notice of the Government’s concerns for over 18 months and has failed to take any action to resolve her financial delinquencies. Applicant did not intentionally falsify her security questionnaire. Her request for a security clearance is denied.

Statement of the Case

On September 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), which sets forth the security concerns of Guidelines F (Financial Considerations) and E (Personal Conduct), as the basis for its preliminary decision to deny Applicant access to classified information.¹

¹ This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted her Answer to the SOR (Answer) in a two-page undated letter. She affirmatively waived her right to a hearing and requested that a decision be made on the administrative record.

Department Counsel submitted its File of Relevant Material (FORM) on October 26, 2010. The FORM contains Government Exhibits (GE) 1 through 8.² A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 12, 2011, and was advised that she had 30 days to submit a response. Applicant did not file a response. The case was assigned to me on April 4, 2011.

Findings of Fact

Applicant is 31 years old. She is married with three children. During her December 2009 background interview, Applicant told the investigator that she was pregnant and was expecting her third child any day. She expected to go on maternity leave when her child was born, which would result in a decrease in her take-home pay.³

Applicant served on active duty in the United States Navy from April 1999 to March 2001. She received an honorable discharge. In October 2003, she attained a Medical Assistant degree. Since separating from active duty, Applicant has worked several jobs, including as a foreclosure representative for a national bank from 2005 to 2007. Applicant has suffered some periods of unemployment over the past 10 years. However, she has been with her current employer since June 2009.⁴

In 2005, Applicant, with her sister and brother-in-law, purchased her grandmother's home. She did so because neither she, nor her sister and brother-in-law, had the financial wherewithal to purchase the home on their own. The home is now in foreclosure with a past due balance of over \$32,000. This is the largest of the debts listed in the SOR (¶1.g). Applicant initially hoped that her brother-in-law and sister would be able to secure a loan modification agreement, so they could take over the mortgage on their own. However, they were unsuccessful and Applicant is now looking into possibly filing for bankruptcy to resolve this debt. Applicant did not submit any documentation to show that she had filed for bankruptcy or had otherwise resolved this substantial debt.⁵

² Government Exhibit (GE) 5, Applicant's Interrogatory Response, appears to be incomplete. Applicant's handwritten response at the bottom of the second page indicates with an arrow that she may have provided additional handwritten information on a subsequent page that was not provided. Applicant failed to object or provide the missing page(s). GE 5, as well as the other exhibits, are admitted.

³ GE 4 and 5.

⁴ GE 4.

⁵ GE 5.

In September 2009, Applicant submitted her security clearance application (SCA). In response to relevant questions regarding her financial record, Applicant denied she had any adverse financial information to report. The following month, the Government reviewed Applicant's credit report. The credit report revealed a number of derogatory accounts. In December 2009, Applicant was questioned by a Government investigator about her finances and her failure to list these debts on her SCA. Applicant stated that she was either unaware of the debts appearing on her credit report or had simply forgotten to list those that she was aware of. In her Answer, Applicant denied intentionally falsifying her SCA.⁶

In July 2010, Applicant responded to a DOHA interrogatory that, in part, asked her for an update regarding her delinquent debts. Applicant did not submit proof of payment or otherwise provide an update as to the status of the debts. She did submit a personal financial statement (PFS), which shows that she is paying on only one of her previously delinquent debts, a student loan account. The PFS also notes that Applicant owes the state of California \$700 and is not paying on this debt.⁷ Applicant estimates that, after paying expenses, she has over \$800 a month left over each month. She provided no explanation for why she is not using this money to satisfy her debts.⁸

In her Answer, Applicant admits 11 of the 16 debts alleged under Guideline F.⁹ These 11 debts total approximately \$38,188. They range from an outstanding \$32 medical bill to a foreclosure, where the amount past due is over \$32,000. She was alerted to some of these delinquent debts during her 2009 background interview.¹⁰ Applicant also claims in her Answer to be repaying two of the debts (§§1.h and 1.i), but failed to submit any proof to substantiate her claim.

Applicant denies the remaining five debts alleged in the SOR, which total about \$1,395. Two of these debts (§§1.n and 1.p) are duplicative of others already alleged in

⁶ GE 3, 4 – 6.

⁷ This debt was not alleged in the SOR, but will be considered in assessing the mitigating evidence, as well as whole-person factors, in this case. ISCR Case No. 09-06770 (App. Bd. Nov. 8, 2002); ISCR Case No. 01-07656 (App. Bd. Aug. 29, 2002).

⁸ GE 5.

⁹ GE 3 (admits §§ 1.b, 1.c, 1.f – 1.m, and 1.o).

¹⁰ Compare GE 5 (discusses debts alleged in §§1.k – 1.o), with, GE 3 (admits she has not contacted the creditors holding these debts or will now make arrangements to pay these debt)

the SOR.¹¹ The remaining three debts denied by Applicant (¶¶1.a, 1.d and 1.e) appear on her recent credit report from October 2010.¹²

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 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.

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

¹¹ GE 6 at 5 and 8 (October 2009 credit report corroborates Applicant's claim that the debt alleged in ¶1.n is the same debt alleged in ¶1.j); GE 8 (October 2010 credit report shows that Chase sold debt to AAC, a collection company, which corroborates Applicant's claim that the debt in ¶1.p is the same as the debt alleged in ¶1.e).

¹² GE 8.

extrapolation of 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 disqualifying conditions under AG ¶ 19. Applicant’s accumulation of over \$38,000 in delinquent debt and her inability or unwillingness to resolve her financial obligations, establishes AG ¶ 19 (a) and (c).¹³

Guideline F also lists a number of mitigating conditions under AG ¶ 20 that may mitigate the concern. I have considered all the mitigating conditions, and find that the following merit further discussion:

(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;

¹³ “(a) inability or unwillingness to satisfy debts; and (c) a history of not meeting financial obligations.”

(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 and provides documented proof to substantiate the basis of the dispute.

Applicant established that the debts alleged in ¶¶1.n and 1.p are duplicative of other debts already alleged in the SOR. AG ¶ 20(e) applies to these debts and I find in favor of Applicant on these two debts.

Applicant's financial problems are current. She admits to owing over \$38,000 on 11 delinquent debts. She provided no documentation to indicate that she has even attempted to resolve these debts. The Appeal Board has previously held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of individual debts", and failure to provide such documentation supports a Guideline F finding against an Applicant.¹⁴

Applicant has been aware of the Government's concerns about her finances since her 2009 interview. Despite this knowledge, she has not contacted some of the creditors brought to her attention during the interview. Although Applicant has suffered periods of unemployment during the past 10 years, she has been with her current employer for the last 2 years and claims to have over \$800 in monthly disposable income that she could use to pay these debts. Applicant has not acted responsibly under the circumstances, and failed to establish that she has made a good-faith effort to repay overdue creditors or otherwise resolve her debts. Her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant failed to establish that any of the mitigating conditions under Guideline F apply, except for AG ¶ 20(e) as to allegations 1.n and 1.p. She failed to mitigate the Financial Considerations concern.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

The guideline notes several disqualifying conditions that could raise a security concern under AG ¶ 16. I have considered all the disqualifying conditions and find that the following warrants discussion:

¹⁴ ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008).

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The security clearance process is contingent upon the honesty of all applicants seeking access to classified information, and begins with the answers provided in the security questionnaire. An applicant should err on the side of over-inclusiveness and, when in doubt, disclose any potential derogatory information. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified their security questionnaire.¹⁵ Instead, one must look at the facts and circumstances surrounding the omission to determine an applicant's true intent.¹⁶

In the present case, the Government failed to submit any evidence that Applicant was aware that she had delinquent debts, which were either 90-days delinquent at the time she filled out her SCA or over 180-days delinquent in the 7-year period prior to signing her SCA. I have thoroughly reviewed the evidence submitted with the FORM, and it falls far short of establishing that Applicant's omission of her delinquent debts was deliberate. Applicant's denial in her Answer is consistent with the responses she provided during her background interview in December 2009. Thus, I find that Appellant did not deliberately falsify her SCA, and find in her favor as to Guideline E.¹⁷

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. An 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

¹⁵ ISCR Case No. 07-16511 at 4 (App. Bd. Dec. 2009) ("In the case of an omission in a SCA or some other document, the Government's burden of production requires more than merely showing that the omission occurred. Rather, the Government must present substantial evidence that the omission was deliberate.").

¹⁶ *Id.*

¹⁷ See, e.g., ISCR Case No. 09-07551 (App. Bd. Mar. 1, 2011) (Unlike in the present case, the Government could point to circumstantial evidence, including inconsistent statements, supporting a falsification allegation and adverse Guideline E determination).

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Applicant served on active duty in the Navy for three years. Since leaving active duty, she has worked numerous jobs to support herself and her family. She has pursued additional educational opportunities to improve her prospects. However, she clearly over extended herself when she purchased a home she could not afford. Applicant has failed to resolve even the most minor debts alleged in the SOR, and her financial irresponsibility leaves me with serious doubts about her reliability and ability to handle classified information. Accordingly, I find that the favorable whole-person factors in this case do not outweigh the significant security concerns at issue.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.m, and 1.o: **Against Applicant**

Subparagraphs 1.n and 1.p: **For Applicant**

Paragraph 2, Guideline E (Personal Conduct): **FOR APPLICANT**

Subparagraph 2.a: **For Applicant**

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge