



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



In the matter of:

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) ISCR Case No. 10-01366
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Applicant for Security Clearance

Appearances

For Government: Philip Katauskas, Esq., Department Counsel

For Applicant: *Pro se*

April 29, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on February 11, 2011. DOHA issued a Notice of Hearing on February 17, 2011. I convened the hearing as scheduled

on March 24, 2011. The Government offered Exhibits (GE) 1 through 3. Applicant did not object and they were admitted into evidence. Applicant testified on her own behalf and offered Exhibits (AE) A and B. They were admitted into evidence without objections. The record was held open until April 7, 2011, to allow Applicant to provide additional documents. She did not submit additional evidence and the record closed. DOHA received the hearing transcript (Tr.) on April 1, 2011.

Findings of Fact

Applicant admitted all allegations in the SOR except ¶ 1.h. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 29 years old. She is not married and has no children. She graduated from high school in 1999, and has been employed since then. She has held a security clearance since 1999.

Applicant admits owing 18 delinquent debts totaling approximately \$21,000. She disputes one debt for \$1,944. In 2003, Applicant's mother passed away at the age of 37. At the time Applicant was 22 years old and had a 13-year-old sister. Applicant took care of her sister. Her sister did not receive any child support, but did receive Social Security and Medicaid benefits until she was 18 years old. Applicant stated she focused on taking care of her sister from 2003 to October 2010. In August 2008, her sister began attending college. Her sister used student loans to pay for some expenses. Applicant estimated she contributed about \$4,000 a year for her sister's expenses until October 2010, when her sister left college.¹

Applicant began accruing debts that became delinquent in about 2004. The debts in SOR ¶¶ 1.a (\$5,449) and 1.p are car loans (\$4,927). She purchased a car in 2004. She permitted a friend to take the car and the friend agreed to make the loan payments. Applicant purchased another car. There was no written agreement between Applicant and her friend. The friend stopped making the payments and Applicant defaulted on the loan. In 2005 or 2006, Applicant could not make the payments on the other car she purchased and it was voluntarily repossessed. Applicant stated she will contact the creditor when she is ready to start making payments. She has not made arrangements to pay either of these debts.²

Applicant admits she owes approximately \$5,500 (SOR ¶1.s) to the Internal Revenue Service (IRS). She was unfamiliar with how income taxes worked and she fell behind in paying them. She had an installment agreement with the IRS for her delinquent taxes, but when her sister went to college, she stopped making the payments on the agreement. She does not know which tax years she owes, but believes she owes for three years. She recently agreed to a new installment agreement

¹ Tr. 22-23, 26-28, 38-42, 58, 67-69.

² Tr. 23-26, 36-38, 49-54.

with the IRS for tax year 2008, and made her first payment of \$100 in February 2011. She did not provide a copy of the installment agreement. She intends to resolve this debt before addressing other delinquent debts.³

Applicant has not paid any of the remaining delinquent debts alleged. She intends to pay all of the debts in the SOR that are below \$300 by the end of 2011. For the debts that are more than \$300 she will work on paying in 2012. She plans on working out a payment plan in 2011 on the car loan debts because she cannot pay them in a lump sum.⁴

Applicant denied she owed the debt in SOR ¶ 1.h (\$1,944). The debt is on her credit report. The debt was for three cable television boxes that the creditor claimed she did not return. Applicant stated she returned them. She has contacted the creditor by telephone to challenge the debt, but has not provided documented proof of her dispute.⁵

Applicant's sister lives with her now that she is no longer attending college. She recently secured a job. Applicant does not have any credit cards. Since her sister left college, Applicant has about \$900 in expendable income after she pays her monthly expenses. Her annual income has increased incrementally from \$36,000 in 2004 to \$71,000 in 2010. She is currently earning about \$65,000 with her present employer. She tithes 10% of her earnings to her church, and made other annual donations to her church. Depending on her salary, her additional donations increased. She estimated her additional donations were another \$2,000 to \$3,000 to her church annually. In 2004, when her salary was less, her additional donation was less. She started keeping a budget two to three years ago. Her budget did not include payments on her delinquent debts. She stated she is not irresponsible with her finances and did not purchase unnecessary things. After she paid her monthly expenses, she did not know where she spent her remaining income. She does not know why she did not pay some of her smaller delinquent debts. She understands now the importance of paying her bills and monitoring her credit.⁶

On November 23, 2009, Applicant was interviewed by an Office of Personnel Management investigator. She acknowledged most of the alleged debts and indicated she planned to pay them when she was able.⁷

Applicant provided character letters. She is described as a person dedicated to her church. She is a good person, who is honest, trustworthy, punctual, and respectful. She is unafraid of new challenges and an exceptional member of the team. She is a

³ Tr. 24-26, 28-36, 38, 42-45; AE B.

⁴ Tr. 23-24, 45-49, 54-56, 69-73.

⁵ Tr. 55-58.

⁶ GE 3; Tr. 59-66, 73-80.

⁷ GE 2.

hard worker, self-starter, resourceful, creative, and solution-oriented. She is the director of finance and administration for a department in her church, where she manages an annual budget of \$10,000. There has never been an issue with her management and accountability.⁸

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 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, 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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 of potential, rather than actual, risk of compromise of classified information.

⁸ AE A.

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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

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

Applicant has 19 delinquent debts that have not paid. Some debts date back to 2005. The amount of the debts range from as little as \$10 to two debts that are as large as \$5,500 and \$5,449. I find there is sufficient evidence to raise this disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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.

Applicant's debts are recent, frequent, and unresolved. She stated she has a plan for resolving her delinquent debts, but has not paid any of them. I find AG ¶ 20(a) does not apply. Applicant took care of her sister after her mother died. This was a condition beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Although Applicant was acting responsibly by taking care of her sister, she did not act responsibly by not paying her bills. She accumulated delinquent debts and did not pay them. She made a choice to give her sister money for college instead of paying money she owed to her creditors. She permitted a friend to take her car and she purchased another car. She did not pay for either of the vehicles and the loans have been delinquent since 2005 to 2006. Her salary was increasing, but she was not managing her money to reduce her debts. She budgeted for her charitable contributions; she did not budget for repaying her delinquent debts. She had an installment agreement to pay delinquent taxes, but failed to abide by the agreement and stopped paying in 2008. At the time, she did not notify the IRS to renegotiate the agreement. She now has a new installment agreement, but has made only one payment. Under the circumstances, I do not find Applicant acted responsibly. I find AG ¶ 10(b) only partially applies.

Applicant has not made good-faith efforts to satisfy all of her delinquent debts. When she was interviewed by an OPM investigator in November 2009, she indicated she would repay the debts when she was able. She has taken nominal action since then. She has made one payment to the IRS for \$100. She has one debt that is as small as \$10, yet she has not paid it. She has not made paying her delinquent debts a priority. There is no evidence she has received financial counseling. The evidence does not support a finding that there are clear indications the problem is being resolved or is under control. I find AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputed the debt in SOR ¶ 1.h, but did not provide documented proof to substantiate the basis of the dispute or evidence of her actions to resolve the debt. Therefore, I find AG ¶ 20(e) 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 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 that guideline, but others warrant additional comment.

Applicant assumed responsibility for caring of her 13-year-old sister when her mother died. Her actions are commendable and it is apparent she has made her sister's well-being a priority. However, Applicant has also made poor financial decisions. She failed to pay her taxes and arranged an installment agreement to satisfy her debt to the IRS. She failed to contact the IRS and stopped paying this debt when her sister went to college. Her actions were irresponsible. Although she had an obligation to her sister, she also incurred an obligation to her creditors. Applicant chose to continue to subsidize her sister and her charity to the detriment of her creditors. Applicant's sister left college in October 2010, yet Applicant has only made one payment of \$100 to the IRS since then. Applicant has not met her burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
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| Subparagraphs 1.a-1.s: | Against Applicant |
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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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge