



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



In the matter of:)
)
) ISCR Case No. 10-01814
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

December 7, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 8, 2011, and requested a hearing before an administrative judge. The case was assigned to me on October 11, 2011. DOHA issued a notice of hearing on September 21, 2011, and the hearing was convened as

scheduled on October 12, 2011. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through J at the hearing. The exhibits were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE K and L that were admitted without objection. Department Counsel's post-hearing memorandum was marked HE II. DOHA received the hearing transcript (Tr.) on October 20, 2011.

Procedural Ruling

Department Counsel stated that the Guideline E allegations (SOR ¶¶ 2.a and 2.b) had been withdrawn by the Government on September 14, 2011. Since the SOR still contains those allegations, I will enter findings in favor of Applicant on those allegations. Additionally, during the course of the hearing Department Counsel moved to amend the SOR to withdraw various allegations under Guideline F. Specifically, he moved to withdraw SOR ¶¶ 1.h, 1.k – 1.r, and 1.u. I granted the motion; however, to insure clarity of the results, I will also enter findings in favor of the Applicant on those allegations.¹

Findings of Fact

Applicant admitted some allegations and denied others. Her admissions are incorporated as findings of fact. After a review of the pleadings, testimony and admitted exhibits, I make the following findings of fact. Applicant is a 42-year-old employee of a defense contractor. She is married. She has four children from earlier relationships. She receives \$2,100 monthly child support payments. She is working toward a bachelor's degree. She served in the Army for 13 years. She held a top secret clearance at that time. She was separated for medical reasons in 2006. She had a brief period of unemployment from July to August 2007. She has worked for her current defense contractor-employer since January 2009.²

The SOR (non-withdrawn allegations) alleges 11 delinquent debts totaling approximately \$28,810. The debts were listed on credit reports obtained on July 31, 2010, February 7, 2011, and May 24, 2011.³

Applicant's financial troubles are attributed to raising her children, mostly as a single parent without support from the children's fathers. It was only recently, in January 2011, that she began receiving child support for two of her children. She currently makes about \$82,000 as a gross salary. Her husband makes \$48,000. They do not have any active credit cards. Her over-all financial income and expense statement

¹ Tr. at 15, 26-27, 69, 71.

² Tr. at 7, 28-29, 41-44, 76; GE 1.

³ GE 3-5.

shows that she has a \$1,200 surplus at the end of the month after paying her expenses.⁴

The debt alleged in SOR ¶ 1.a is a debt from an unexpired lease. She provided proof that the debt was settled and resolved. The debt at SOR ¶ 1.b is a collection for a cable debt. She provided proof of an on-going payment plan to resolve this debt. The debt alleged at SOR ¶ 1.c is a school loan debt for \$6,226 that she incurred when she had to withdraw from classes because of her pregnancy. Her GI Bill entitlement does not pay for classes not completed. She recently set up a payment plan for this debt whereby she would pay \$200 monthly until the debt is solved, however, she did not provide any proof of payments under the plan. She incurred the debt at SOR ¶ 1.d for \$6,598 when she was in the Army. This debt is still unresolved. She provided proof that the \$109 debt at SOR ¶ 1.e was paid. The \$1,789 debt listed at SOR ¶ 1.f is a credit card account that she used while in the Army. This debt is unresolved. She claims the debt at SOR ¶ 1.g for \$207 does not appear on any credit reports, but the debt is reflected in the GE 3 at p. 22 (at hand-numbered p. 258).⁵

The tax debt Applicant owes relates back to her Army days. She failed to pay enough withholding when she left the Army for tax year 2005. The debt at SOR ¶ 1.i is \$6,480. She talked with the IRS and claims to have set up a payment plan to resolve the debt by paying \$400 a month, however, no documentation of payment was provided. This debt is unresolved. The alleged debt in SOR ¶ 1.j is collection account in the amount of \$2,935 for child care services. She set up a payment plan for this debt and made two payments in September 2011 for a total of \$404. She provided documented proof that the debts at SOR ¶¶ 1.s and 1.t were paid.⁶

Applicant submitted several character letters from supervisors and colleagues who work with her in her current position. They describe Applicant as a professional who is reliable, trustworthy, and someone who is an asset to her organization. She did not present any evidence that she sought any form of financial counseling.⁷

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 that are to be used in evaluating an applicant's eligibility for access to classified information.

⁴ Tr. at 43-44; GE 2.

⁵ Tr. at 45-52; GE 3; AE A-E, G.

⁶ Tr. at 45-52; GE 3; AE A-G, I.

⁷ AE J.

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 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 about 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* Executive Order 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 as follows:

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 including tax debts and credit card debts, and was unable or unwilling to satisfy her obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although some debts have been paid, Applicant still owes many of her debts, including the larger balance accounts. They are not infrequent and there is no evidence to support the assertion that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced a brief period of unemployment and was not receiving child support for two children for a considerable amount of time. These are conditions beyond her control. However, in order for this mitigating condition to fully apply, the Applicant must also act responsibly under the circumstances. Applicant failed to show that her actions were reasonable since the larger debts remain unpaid and it appears she has discretionary income to pay these debts. AG ¶ 20(b) is partially applicable.

Applicant produced no evidence of receiving financial counseling. Although several debts are paid, and she has made installment payments on several more debts, the remaining debts remain unsettled and unresolved, including her tax debt and student loan debt. Therefore, her finances are not being resolved and are not under control. Her preliminary attempts to reach settlements with the IRS and her student loan creditor at this late date are insufficient to support a finding that she has made a good-faith effort to pay or otherwise resolve her remaining debts. AG ¶¶ 20(c) and 20(d) are only applicable to the debts listed at SOR ¶¶ 1.a-1., 1.e, 1.j, 1.s, and 1.t.

At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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 relevant 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 relevant 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 some warrant additional comment.

I considered the character letters of support for Applicant. I also considered her period of unemployment for the period she was not receiving child support. I also found Applicant to be honest and candid about her finances. However, with resources available to her, she has done very little to resolve her debts. She only recently engaged her creditors in settlement negotiations. Her past financial track record reflects a troublesome financial history that causes me to question her ability to resolve her debts.

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 has not mitigated the 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
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Subparagraphs 1.a - 1.b:	For Applicant
Subparagraphs 1.c - 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f - 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j - 1.u:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraphs 2.a - 2.b:	For 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge