



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-01875
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

January 5, 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.

On March 22, 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.

Applicant answered the SOR on April 14, 2010, and requested a hearing before an administrative judge. The case was assigned to me on November 8, 2010. DOHA issued a Notice of Hearing on November 12, 2010. I convened the hearing as scheduled on December 9, 2010. Applicant affirmed she received the Notice of Hearing within the 15-day requirement. The Government offered Exhibits (GE) 1 through 5.

Applicant did not object and they were admitted. The Government also offered a demonstrative exhibit that was marked as Hearing Exhibit I. Applicant and one witness testified on her behalf. She offered Exhibits (AE) A through E, which were admitted without objections. The record was held open until December 30, 2010, to allow Applicant to submit additional documents. She did not submit any documents and the record closed. DOHA received the hearing transcript (Tr.) on December 14, 2010.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e, and 1.h through 1.n. She denied the remaining allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old single mother. Her daughter is 13 years old and has lived with Applicant's grandmother since 1997. She receives child support for her daughter, but it is paid directly to her grandmother who is the caregiver. Applicant also provides approximately \$100-\$200 a month in support for her child.

Applicant is a high school graduate. She began work with her present employer in May 2008, and remained employed until January 2009. She was unemployed from January 2009 until she was rehired by the same employer in December 2009. Her current hourly rate with her present employer is \$17.88. She works 40 hours a week. From September 2007 until May 2008, Applicant worked for a private company for 40 hours a week and earned an hourly rate of \$6.25. From July 2007 to September 2007, she was unemployed. From August 2005 to July 2007, she worked as a welder and earned \$10.75 an hour. Applicant had periods of unemployment prior to 2005.¹

Applicant incurred medical bills when she did not have health insurance. The bills incurred were for both her and her daughter. The medical bills were for acute care and not long-term medical problems. She estimated some of the bills are about six to seven years old. Applicant was also in a car accident in 2007. The other driver's insurance carrier did not cover her injuries. The insurance carrier told her the reason she was not covered was because they did not believe it was their responsibility.²

In 2008, Applicant contacted a debt consolidation company to help her set up a budget to identify where she was spending her money. She did not adhere to the budget and did not enlist the services of the consolidation company.³

The debts in SOR ¶¶ 1.a and 1.b are medical bills to the same creditor (balances of \$21 and \$223).⁴ In her answer to the SOR dated April 14, 2010, Applicant stated she

¹ Tr. 28-39, 41, 43-44.

² Tr. 39-40, 44-48.

³ Tr. 48.

contacted the creditor and she agreed to pay \$20 a month beginning in May 2010, until the debt was paid in full. She has not made any payments. The debts remain unpaid and unresolved.⁵

The debt in SOR ¶ 1.c (balance \$1,807, same debt as SOR ¶ 1.g) is for an overdrawn bank checking account due to insufficient funds. Applicant provided a document showing that she paid \$251 on April 20, 2010. In her answer to the SOR, she stated she made arrangements to pay \$300 on the 16th of the month for four months. She did not make the promised payments. She stated she contacted the creditor who agreed to settle the debt for \$780, provided she paid \$390 on December 30, 2010, and the same amount on January 3, 2011. Applicant did not provide any documented proof of the settlement offer or any other payments she made toward the debt. The debt is unpaid and unresolved.⁶

Applicant stated in her answer that she contacted the creditor for the debt in SOR ¶ 1.d (\$84) and she agreed to pay the balance in full. She did not pay the debt in April 2010, as she promised. She stated at her hearing she attempted to pay the debt in October 2010, with a debit card, but the payment did not go through. She admitted it was likely due to not having sufficient funds loaded on the debit card. The debt remains unpaid and unresolved.⁷

The debt in SOR ¶ 1.e (\$9,296) is for a repossessed vehicle. Applicant returned the vehicle voluntarily. She stated after purchasing the used car in 2003, it developed mechanical problems, and it was too expensive to repair. She stated the creditor initially agreed to pay for half the repairs, then refused to do so. In her answer, she stated that she contacted the creditor and they both agreed she would pay \$100 a month that would be withdrawn from her checking account. She did not make any payments as promised. She provided a document dated December 8, 2010, with a settlement offer of \$6,031, provided she makes monthly payments of \$100 until the amount is satisfied. The first payment is due January 3, 2011. The debt is unpaid.⁸

The debts in SOR ¶¶ 1.f, 1.p, and 1.q are to the same creditor (\$365, \$1,722, and \$163). They are medical debts. Applicant stated she contacted the creditor in April 2010, and was advised it did not have a record of her debts. She then stated that she contacted the creditor again on December 8, 2010, and it now has a record of the debts. It agreed to consolidate the debts, and she will begin making payments in January

⁴ GE 2 at 1.

⁵ Tr. 21, 49-50.

⁶ Tr. 22-26, 50-52, 60-62; AE B.

⁷ Tr. 52-54.

⁸ Tr. 26-27, 55-57; AE D.

2011. She stated the creditor was going to send her a written offer, and she is waiting to receive it. The debts remain unpaid.⁹

The debt in SOR ¶ 1.h is a medical bill (\$95). In her answer, Applicant stated she contacted the creditor in June or July 2010, and made payment arrangements. At her hearing she confirmed that she could not make the payments on the plan and tried to contact the creditor again, but was unsuccessful. The debt is unpaid and unresolved.¹⁰

The debt in SOR ¶ 1.i (\$1,938) is a medical debt. Applicant stated that in April 2010, she contacted the creditor, and it agreed that her payment could be made by mail or an office visit. She did not make a payment at that time. She stated she went back to the facility months later, and she was told by the creditor that it would mail her an invoice. Apparently it did not have Applicant's new address because she had moved. She has not yet received the invoice. Applicant has not paid the debt.¹¹

The debts in SOR 1.j, 1.k, 1.l, 1.m, and 1.n are medical debts (\$346, \$36, \$59, \$369, and \$231) from the same creditor. Applicant stated in her answer that she contacted the creditors and made arrangements to pay the debts. She stated that she was told by the creditors that she would have to pay by debit card or money order, and that they wanted her to begin her payments right away. Applicant did not make any payments. She stated she contacted the creditors again on December 8, 2010, and was advised by the creditor that it would send her something in the mail. The debts are unpaid and unresolved.¹²

The debt in SOR ¶ 1.o (\$90) is for telephone services. Applicant stated she contacted the creditor and was told it has no record that she owes the debt. The debt is listed on her credit report. She has not disputed the debt with the credit bureau (CB).¹³

Applicant disputes the debts in SOR ¶¶ 1.r, 1.s, 1.t, 1.u, and 1.v (\$110, \$1,050, \$286, \$108, \$1,111). She stated she contacted the creditor in SOR ¶ 1.r and it did not have a record that she owes the debt. Regarding the other debts, she stated she did not contact the collection companies that now likely own the debts. She stated she could not locate the creditor of the debts in SOR ¶¶ 1.s and 1.t. The debts are listed on

⁹ Tr. 57-60.

¹⁰ Tr. 62-63.

¹¹ Tr. 63-68.

¹² Tr. 68-72.

¹³ Tr. 72-75.

Applicant's credit reports.¹⁴ She did not dispute the debts with the CB. The debts are unresolved and unpaid.¹⁵

Applicant's net monthly pay is \$2,436 and her monthly expenses are approximately \$1,418. She estimated that she has about \$200 to \$300 remaining at the end of the month after paying her bills. She does not know how she spends the remaining money. She does not have a checking, savings, or retirement account. She keeps whatever money she has in cash. She does not have a budget.¹⁶

Applicant's mother testified on her behalf. She stated Applicant is a hard worker and her ability to maintain a steady job has given her stability. Applicant has had transportation problems because jobs that are available to her required her to have reliable transportation. Some of the jobs she has held did not have health insurance. She believes her daughter is motivated.¹⁷

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.

¹⁴ GE 2, 3, 4.

¹⁵ Tr. 73.

¹⁶ Tr. 75-86.

¹⁷ Tr. 86-95.

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.

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 22 delinquent debts totaling approximately \$21,041, that are unpaid or unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

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 has 22 delinquent debts that are unpaid and unresolved. She has contacted some creditors and made promises to pay the debts, but has not fulfilled her promises. I find that AG ¶ 20(a) is not established because Applicant's delinquent debts are numerous, ongoing, and not the result of circumstances making them unlikely to recur.

Applicant is a single mother and her child lives with Applicant's grandmother. Her child receives child support from her father and Applicant also provides financial support for her child. Applicant has experienced periods of unemployment and underemployment, which were beyond her control. For AG ¶ 20(b) to be fully applicable, Applicant must have acted responsibly under the circumstances. Applicant stated that she made payment agreements with creditors, but admitted she has not followed through with the payments. Her personal financial statement showed she had excess income after paying her expenses, but she did not use it to repay her debts. She stated she contacted a debt consolidation company, and they helped her prepare a budget, but she did not follow it or consolidate her debts. Applicant stated she had a settlement agreement with the creditor in SOR ¶ 1.c. She was to pay \$300 a month for four months. She provided proof of one payment of \$251, which was not in compliance with the original agreement. She stated she had a new settlement agreement, but did not provide documentation to substantiate her claim. I find AG ¶ 20(b) only partially applies

because Applicant has not acted responsibly under the circumstances. Although she was assisted in preparing a budget, Applicant has not received financial counseling. She has not provided proof that she is making consistent good-faith payments on any of the 22 delinquent debts. I find that there are no clear indications the problem is being resolved and is under control. Therefore, I find AG ¶¶ 20(c) and 20(d) do not apply. Applicant has not disputed or provided documentation to support her dispute for those debts that she denied. She admitted that, regarding some of her delinquent debts, she did not contact the collection companies that likely held her accounts. I find AG ¶ 21 (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 some warrant additional comment. Applicant experienced periods of unemployment and underemployment. She is a single mother supporting her daughter. In April 2010, after receiving the SOR, Applicant promised to make payments on her debts and pay them in full. She has not fulfilled those promises. She denied other debts that were alleged, but took no action to dispute or otherwise resolve them. She has 22 delinquent debts totaling approximately \$21,041 that are unpaid or unresolved. Applicant did not provide a plan to pay or resolve her debts. Applicant failed to meet 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.v:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge