



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



In the matter of:)	
)	
)	ISCR Case No. 10-02534
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esq., Department Counsel
For Applicant: *Pro se*

January 24, 2011

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On June 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 on September 1, 2006.

Applicant answered the SOR in writing on June 17, 2010, and elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 2, 2010. The FORM was mailed to Applicant, and proof of receipt was received by DOHA on November 15, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. On December 10, 2010, Department Counsel noted no objections to the additional submissions by Applicant. The case was assigned to me on December 23, 2010.

Findings of Fact

In Applicant's answer to the SOR, she admitted ¶¶ 1.a, 1.b, 1.c, and 1.d, but denied 1.e. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. She is unmarried and has no children. She currently works as a systems analyst for a defense contractor. She has a bachelors degree in computer science.¹

The debts listed in the SOR are supported by a credit report dated March 31, 2010. Her financial difficulties were impacted by several periods of unemployment within the past 10 years (June-August 2000, August 2001-June 2002, and September 2007-August 2008). In 2004, she purchased a home and rental property. The rental property produced a positive cash flow for about seven to nine months. After that, the tenants stopped paying rent and Applicant was forced to evict them. When she reclaimed the property, it was uninhabitable. She was required to invest \$4,000 just to make the property habitable. Her mortgage payments on the rental property doubled due to increased taxes and insurance. In May 2006, she tried to sell this property, but despite lowering the price it did not sell. The lender foreclosed on this property resulting in the debt listed in SOR ¶ 1.d (mortgage balance listed at \$185,000). Applicant made two \$50 payments in June and July 2010 on this debt. No evidence of additional payments was presented.²

Applicant defaulted on her home mortgage due to unemployment in 2007 and 2008. She sought a loan modification but the paperwork was reportedly not received and her home was foreclosed in September 2009. This is the debt listed in SOR ¶ 1.b (mortgage balance listed at \$75,614). Applicant also defaulted on the second mortgage on this property (SOR ¶ 1.c; mortgage balance listed at \$17,637). Both mortgages were serviced by the same lender. In April 2010, the lender notified Applicant she was liable on both debts. Applicant presented evidence showing that she made two \$50 payments

¹ Item 4.

² Items 3, 5.

in June and July 2010 on the first mortgage deficiency and one \$50 payment in July on the second mortgage deficiency. No evidence of additional payments was presented.³

Applicant has not resolved the judgment entered against her for \$3,184 (SOR ¶ 1.a). She did settle the credit card debt listed at SOR ¶ 1.e. She has approximately \$24,000 worth of student loan debt that is currently deferred.⁴

Applicant consulted with a bankruptcy attorney about the possibility of filing for bankruptcy protection, but decided against taking that action. Instead, she chose to negotiate directly with the creditors. It is unclear from the record what result these negotiations have achieved.⁵

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."

³ Items 3, 5.

⁴ Item 3.

⁵ Item 3.

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 that an applicant may deliberately or inadvertently fail to 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.

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 them under AG ¶ 19 and especially considered the following:

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

Applicant defaulted on three mortgage loans and had a judgment entered against her. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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.

Except for the debt in SOR ¶ 1.e, Applicant did not provide evidence that she has paid or resolved any of her delinquent debts. Therefore, her behavior is recent and the delinquent debts remain a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain owed and unresolved.

Applicant provided some information that she experienced periods of unemployment and that her tenants abandoned her rental property. These could be considered conditions beyond her control. The second requirement for mitigating condition AG ¶ 20(b) to apply is whether Applicant acted responsibly under the circumstances. Applicant failed to meet her burden to show that she took responsible actions to deal with her debts while, or after, she was undergoing these hardships. I find AG ¶ 20(b) does not apply.

There is some evidence Applicant sought bankruptcy advice from an attorney, but decided to forego seeking formal representation. There is no clear evidence that Applicant's financial problems are being resolved or under control. Although she documented several \$50 payments for two months on the three delinquent mortgage debts, these payments are minimal considering the amount of the underlying debt. Under these circumstances, I find she has not made a good-faith effort to pay her delinquent debts or attempt to resolve them, other than SOR ¶ 1.e. I find AG ¶¶ 20(c) and 20(d) apply to SOR debt ¶ 1.e, but not to the remainder of the SOR debts.

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 considered that the Applicant experienced periods of unemployment and difficulties with a tenant. I have also considered her current employment position. Except for the credit card debt and the minimal recent mortgage payments, she has done little to resolve her debts. She failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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.d.:	Against Applicant
Subparagraph 1.e.:	For 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.

Robert E. Coacher
Administrative Judge