



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



In the matter of:)
)
) ISCR Case No. 10-03738
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

June 10, 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 December 15, 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. DOHA acted 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 January 10, 2011, and elected to have her case decided on the written record. Department Counsel submitted the

Government's File of Relevant Material (FORM) on March 18, 2011. The FORM was mailed to Applicant, and proof of receipt was received by DOHA on March 29, 2011. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided no additional information. The case was assigned to me on May 16, 2011.

Findings of Fact

In Applicant's answer to the SOR, she admitted ¶¶ 1.a - 1.k and 1.m - 1.v, and denied 1.l and 1.w. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 49-year-old mother of four children, ages 30, 26, 20, and 12. She was separated from her former husband in 2002 and divorced in June 2005. She has worked for a defense contractor since August 2009. She is a high school graduate and has some college.¹

The SOR alleges 24 delinquent debts totaling about \$18,738. The debts are supported by credit reports dated August 2009, October 29, 2009, and two dated April 22, 2010. Her financial difficulties were impacted by being a single mother and raising four children. She accepted responsibility for all but two debts. One was the responsibility of her ex-husband pursuant to their divorce decree (SOR ¶ 1.m) and the second she could not find a record for this debt (SOR ¶ 1.x). In her answer, she claimed many of the debts have been paid or that payment plans have been established. However, for many she failed to document the payments or the plans with evidence.²

Since her divorce in 2005, Applicant supported all of her children. Her ex-husband kept most of the personal property acquired during the marriage. She admitted going into debt to support her children's lifestyle. In order to make ends meet, she has also worked a second job for the last 10 years. In January 2010, she told an investigator that she intended to have all her delinquent debts paid by December 2010. She did not meet that self-imposed deadline.³

The debt alleged in SOR ¶ 1.a is a delinquent medical debt in the amount of \$210. A payment plan was established beginning in November 2010, but no proof of payments was submitted. This debt is unresolved.⁴

¹ Items 4, 5, and 6.

² Items 4, 6-8.

³ Items 4, 6, 8.

⁴ Items 8 (at 172), 9-12.

The debt alleged in SOR ¶ 1.b is a delinquent medical debt in the amount of \$376. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.⁵

The debt alleged in SOR ¶ 1.c is a delinquent debt in the amount of \$55. This debt was paid in full on November 22, 2010. This debt is resolved.⁶

The debt alleged in SOR ¶ 1.d is a delinquent medical debt in the amount of \$128. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.⁷

The debt alleged in SOR ¶ 1.e is a delinquent medical debt in the amount of \$278. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.⁸

The debt alleged in SOR ¶ 1.f is a delinquent medical debt in the amount of \$69. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.⁹

The debt alleged in SOR ¶ 1.g is a delinquent medical debt in the amount of \$76. Applicant claimed a payment plan was established and she presented proof of payments to this creditor for other accounts, but not for this particular account. This debt is unresolved.¹⁰

The debt alleged in SOR ¶ 1.h is a delinquent debt in the amount of \$57. This debt was paid in full. This debt is resolved.¹¹

The debt alleged in SOR ¶ 1.i is a delinquent credit card debt in the amount of \$337. This debt was paid in full on November 29, 2010. This debt is resolved.¹²

⁵ Items 4, 9-12.

⁶ Item 4.

⁷ Items 9-12.

⁸ *Id.*

⁹ *Id.*

¹⁰ Items 8 (at 173-175), 9-12.

¹¹ Items 8 at 178.

¹² Item 4.

The debt alleged in SOR ¶ 1.j is a delinquent credit card debt in the amount of \$278. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.¹³

The debt alleged in SOR ¶ 1.k is a delinquent credit card debt in the amount of \$709. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.¹⁴

The debt alleged in SOR ¶ 1.l is a delinquent debt in the amount of \$35. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.¹⁵

The debt alleged in SOR ¶ 1.m is a delinquent debt in the amount of \$3,008. Applicant supplied proof that her husband was responsible for this debt. This debt is resolved.¹⁶

The debt alleged in SOR ¶ 1.n is a delinquent debt in the amount of \$1,080. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.¹⁷

The debt alleged in SOR ¶ 1.o is a delinquent debt in the amount of \$770. Applicant claimed a payment plan was established, but no proof of a plan or payments was submitted. This debt is unresolved.¹⁸

The debt alleged in SOR ¶ 1.p is a delinquent student loan account in the amount of \$4,940. Applicant claimed the account was put into “forbearance” with monthly payments to be made in the amount of \$217.64, beginning in December 2010. No proof of payments was submitted. This debt is unresolved.¹⁹

The debt alleged in SOR ¶ 1.q is a delinquent student loan account in the amount of \$300. Applicant claimed the account was put into “forbearance” with monthly payments to be made in the amount of \$14, beginning in January 2011. No proof of payments was submitted. This debt is unresolved.²⁰

¹³ Items 9-12.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Items 8 at 184.*

¹⁷ Items 9-12.

¹⁸ *Id.*

¹⁹ Items 4, 9-12.

²⁰ *Id.*

The debt alleged in SOR ¶ 1.r is a past-due mortgage in the amount of \$2,309. Applicant claimed the account is in the loan modification process and has agreed to send in an amount towards past-due payments until the modification process is completed. No final loan modification or loan payments were submitted. This debt is unresolved.²¹

The debt alleged in SOR ¶ 1.s is a delinquent debt in the amount of \$110. Applicant claimed the account was paid. No proof of payment was submitted. This debt is unresolved.²²

The debt alleged in SOR ¶ 1.t is a delinquent debt in the amount of \$656. Applicant claimed a settlement was reached, but no proof of a payment plan or payments was submitted. This debt is unresolved.²³

The debt alleged in SOR ¶ 1.u is a collection account to a law firm in the amount of \$1,498. Applicant made three payments of about \$66 in December 2010 and January 2011. This debt is unresolved.²⁴

The debt alleged in SOR ¶ 1.v is a delinquent debt in the amount of \$74. The record includes a proposed settlement plan, but no proof of payments was submitted. This debt is unresolved.²⁵

The debt alleged in SOR ¶ 1.w is a delinquent telecommunications debt in the amount of \$737. Applicant claimed a settlement was reached and paid, but no proof of payment was submitted. This debt is unresolved.²⁶

The debt alleged in SOR ¶ 1.x is a delinquent debt in the amount of \$400. Applicant claimed she called the creditor and no record of a past-due account was located. This debt is unresolved.²⁷

Applicant has net income of about \$4,173 with monthly expenses of about \$2,020 and debt payments of \$1,358. She has a net remainder of \$795. There is no evidence of Applicant receiving financial counseling.²⁸

²¹ Items 9-12.

²² *Id.*

²³ *Id.*

²⁴ Items 4, 8-12.

²⁵ Items 8 (at 188), 9-12.

²⁶ Items 9-12.

²⁷ Items 4, 9-12.

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 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 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).

²⁸ Items 4, 7.

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 the following are potentially applicable:

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

Applicant has numerous past-due debts that she was unable or unwilling to satisfy. 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;
- (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.

Except for the debts in SOR ¶¶ 1.c, 1.h, and 1.i, 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 financial hardships after her divorce. This could be considered a condition beyond her control. The second requirement in order to have mitigating condition AG ¶ 20(b) apply is whether Applicant acted responsibly under the circumstances. Although Applicant took on a second job and made some payments, she failed to meet her burden to show that she took responsible actions to deal with her debts after her divorce. I find AG ¶ 20(b) does not apply.

There is no evidence Applicant sought financial counseling. There is no clear evidence that Applicant's financial problems are being resolved or under control. Although she documented a few payments to some creditors and completely paid three creditors, these payments are minimal considering the number and amount of the remaining 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.c, 1.h, and 1.i. I find AG ¶¶ 20(c) and 20(d) apply to SOR ¶¶ 1.c, 1.h, and 1.i, but not to the remainder of the SOR debts.

Applicant documented that the debt listed at SOR ¶ 1.m was her ex-husband's obligation as imposed by their divorce decree. She provided a legitimate basis to dispute this debt supported by appropriate documentation. I find AG ¶ 20(e) applies to SOR ¶1.m.

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 financial difficulties as a single parent after her divorce. I have also considered her current employment position. Although she paid three small debts, she has done little to resolve her remaining 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Subparagraphs 1.h – 1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n – 1.z:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge