



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-03924

Appearances

For Government: Paul DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

02/24/2012

Decision

HOWE, Philip S., Administrative Judge:

On August 6, 2009, Applicant submitted her Security Clearance Application (SF 86). On June 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued 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 acknowledged receipt of the SOR on June 10, 2011. She answered the SOR in writing on June 29, 2011, and requested a hearing before an administrative judge. DOHA received the request on July 7, 2011. Department Counsel was prepared to proceed on October 3, 2011, and I received the case assignment on October 6, 2011. DOHA issued a Notice of Hearing on November 21, 2011, and I convened the hearing

as scheduled on December 7, 2011. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on December 19, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.d to 1.i., and 1.k of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.a, 1.c, 1.j, and 1.l of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 54 years old, divorced since 2007, and has two adult children. She works for a defense contractor in a logistical position. (Tr. 32, 34; Exhibit 1)

Applicant has 12 delinquent debts listed in the SOR. They total \$35,264. Three debts are paid, eight are being paid in a commercial installment payment plan operated by a private debt management firm hired by Applicant in October 2009, and one debt is disputed and remains unpaid. Applicant pays \$967 automatically into the plan monthly. The debt management company's fee is \$7,208 to date. Applicant has paid \$23,208 to date in this plan. (Tr. 19-31, 45, 59-61; Exhibits 2-6, A-E)

The first delinquent debt is an apartment lease which Applicant had with her daughter (Para. 1.a). Applicant got a job overseas and departed in 2008. Her daughter remained in the apartment until she decided to leave before the lease expired. This debt for \$2,672 is in the payment plan and being paid. (Tr. 19; Exhibit 2-6, B)

The second delinquent debt is owed on a medical procedure for \$1,369 (Para. 1.b). This debt is included in the payment plan and is being paid. (Tr. 20; Exhibits 2-6, B)

The third delinquent debt is for \$657 (Para. 1.c). Applicant paid this debt and it is resolved. The collector submitted a document showing the debt was paid in June 2011. (Tr. 23; Exhibits 2-6, E)

The fourth delinquent debt is owed on a credit card for \$11,000 (Para. 1.d). Applicant included it in her debt repayment plan. It is being resolved by the installment payment plan. (Tr. 23; Exhibits 2-6, B)

The fifth delinquent debt is owed on a loan for furniture in 2004 in the amount of \$7,288 (Para. 1.e). Applicant claims her former husband is responsible for this debt. This debt is included in Applicant's debt repayment plan. (Tr. 23, 24, 39; Exhibits 2-6, B-D)

The sixth delinquent debt is for \$1,133 owed on a credit card (Para. 1.f). This debt was in the debt repayment plan and is shown as paid by that plan. This debt is resolved. (Tr. 25, 26; Exhibits 2-6, B-D)

The seventh delinquent debt is for \$606 owed to a clothing company (Para. 1g). This debt is being paid in the installment debt repayment agreement. (Tr. 26; Exhibits 2-6, B-D)

The eighth debt is owed on a credit card for \$105 (Para. 1.h). Applicant's ex-husband used her card to make this purchase and did not pay her for it. It is included in her debt repayment plan. (Tr. 26; Exhibits 2-6, B-D)

The ninth debt is owed for a telephone bill in the amount of \$160 (Para. 1.i). This debt is included in Applicant's debt repayment plan. (Tr. 27; Exhibits 2-6, B-D)

The tenth debt is owed on a credit card for \$128 (Para. 1.j). The debt is disputed and is not in the debt repayment plan. Applicant claimed she contacted the collection agency who stated this debt is paid. It is resolved. (Tr. 29; Exhibits 2-6, B-D)

The eleventh debt is owed to a timeshare operator. The amount owed is \$10,098 (Para. 1.k). Applicant contends her former husband is responsible for this debt. This debt is included in Applicant's debt repayment plan. (Tr. 30, 39; Exhibits 2-6, B-D)

The twelfth and final debt listed in the SOR is \$48 owed on a bank checking account (Para. 1.l). Applicant denied this debt and disputed it. It has not been paid. (Tr. 30, 31; Exhibits 2-6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 (AG ¶ 2(a)). 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated \$35,264 in delinquent debt from 2004 to the present time that was unpaid. Applicant has 12 delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

(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 was divorced in 2007. Her former husband incurred several of the debts listed in the SOR, including the timeshare debt for \$10,098, the \$105 credit card debt, and the \$7,288 furniture loan debt, all of which Applicant contends he should pay or contribute to the payment of these debts. Applicant has kept herself employed and tried to repay the debts. She hired a debt repayment firm in October 2009 to handle the resolution of these debts for her. AG ¶ 20 (b) applies.

Applicant is currently paying her debts in an orderly manner. Therefore, there are clear indications from the evidence she presented that the financial problems are under control and being resolved. AG ¶ 20 (c) applies.

Applicant entered a debt repayment plan with a commercial firm. That company has paid some debts and is making regular payments on the remaining obligation. Three debts are paid. Eight are being paid and a \$48 disputed debt remains unpaid. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay her delinquent debts.

Applicant disputes two debts. Debts #10 and #12 have a reasonable basis for her to dispute their amounts and obligation by her to pay them. She contacted the creditor in debt #10 and contends she was told the debt was paid. Debt #12 Applicant does not

recognize as being owed by her. Applicant showed the actions she took to determine the legitimacy of the debt disputes. AG ¶ 20 (e) applies.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant was a mature working adult when she incurred these 12 delinquent debts. She let them languish unpaid for at least four years, during which time she was divorced. She attempted to pay them through her own efforts, but realized it would be more reliable if she hired a debt repayment firm to handle the debts for her. She pays \$967 monthly into the plan and to date has paid about \$23,208 in the plan. Her debts are being paid. Applicant has changed her situation by paying these debts. There does not appear to be any possibility of recurrence because Applicant is divorced and her children are adults and on their own. Applicant is responsible only for herself. With a majority of the debts being paid to date in the plan there is no likelihood of pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations. I conclude the “whole-person” concept for Applicant.

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: FOR APPLICANT

Subparagraphs 1.a to 1.l: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge