



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



In the matter of:)
)
) ISCR Case: 10-04772
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

May 10, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On February 4, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 22, 2010, 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On December 16, 2010, Applicant filed an answer to the SOR and requested that the case be decided on the written record in lieu of a hearing. On January 4, 2011, Department Counsel prepared a File of Relevant Material (FORM) containing six Items

and mailed Applicant a complete copy on January 24, 2011. Applicant received the FORM on January 31, 2011, and had 30 days from its receipt to file objections and submit additional information. She did not submit any additional information. On March 13, 2011, DOHA assigned the case to me.

Findings of Fact

In her answer to the SOR, Applicant admitted all allegations contained in ¶ 1. Her admissions are incorporated into the following findings.

Applicant is a 29 years old and single. She earned a bachelor's degree in Psychology in May 2004 and a master's degree in Criminal Justice in January 2006. From August 1999 to August 2004, she was employed part-time. She then worked full time for private companies until December 2009, when she obtained a position as a program cost control analyst for a defense contractor. (Item 3.)

In March 2010 Applicant met with a government investigator to discuss her delinquent financial obligations. During that interview, she acknowledged that her student loans (the bulk of her debt) were deferred until January 2009 and then went into a default status because she did not have sufficient income to pay them. (Item 4 at 11.) She told him that she intended to pay all of her debts as she becomes financially able to do so. (*Id.* at 12.)

In August 2010 Appellant submitted a set of Interrogatories. She stated that she had not resolved her student loans or a credit card that she opened in 2007. She noted that she established a plan to "better" manage her budget and pay her debts. (Item 4 at 5.) Pursuant to that plan, she resolved four credit card debts. (*Id.* at 15-18.)

Based on February and September 2010 credit bureau reports (CBR), the SOR alleged five debts totaling \$29,093, of which \$27,498 represented unpaid student loans. The remaining \$1,595 is an unpaid credit card debt.

Applicant offered no evidence of any payment or payment plan to resolve these debts. She has not obtained credit counseling. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be 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.

Directive ¶ E3.1.14 requires the Government to 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.” 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.”

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.

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Based on two credit bureau reports and her statements, Applicant has been unable to satisfy delinquent debts that began accruing in 2007. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 sets forth conditions that could mitigate financial security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Because Applicant's delinquent debts are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. There is insufficient evidence to warrant

the application of AG ¶ 20(b) because the delinquent debt alleged in the SOR relates to the accumulation of unpaid student loans, and not as the result of circumstances beyond her control. Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). She did not submit evidence that she received credit counseling or that her financial situation is under control. She did not present sufficient evidence that she made a good-faith effort to pay or resolve her student loan debts. There is no evidence to support the application of AG ¶ 20(e) or AG ¶ 20(f).

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). They include the following:

- (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. Applicant is a mature individual, who has worked for a defense contractor since December 2009.

In March 2010 Applicant learned of the Government's concerns relating to her financial delinquencies, including her large unpaid student loan. In August 2010 she informed the Government that she paid four small debts but had not yet begun to address her student loans. In November 2010 DOHA filed a SOR, listing \$29,093 of delinquent debts that consist of \$27,498 in student loans. In January 2011 the Government filed the FORM. For almost a year, she has been on notice that her unpaid or unaddressed student loans were creating security concerns and potentially affecting her employment. Although she provided proof that she resolved four smaller debts during that time period, she did not submit any documentation that she contacted the student loan creditors to inform them of her financial problems and possibly establish a minimal repayment plan. While Applicant may have limited funds to address all of her debts, she could have taken some steps to address her student loans and accumulation of debt, such as obtaining credit counseling or financial assistance through her company's Employee's Assistance Program, and establishing a solid budget to resolve

her obligations. The record contains insufficient evidence about her character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates sufficient doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	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.

SHARI DAM
Administrative Judge