



ISCR Case No. 10-05439

Applicant for Security Clearance

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel

For Applicant: *Pro se*

March 2, 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 October 29, 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 for SORs issued after September 1, 2006.

In an undated response to the SOR, Applicant elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 10, 2010. The FORM was mailed to Applicant and it was received on January 12, 2010. Applicant was afforded an opportunity to file objections

and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on February 28, 2011.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.b, 1.d, and 1.f. She denied the allegations in ¶¶ 1.c, 1.e, and 1.h, and did not provide a response to the allegation in ¶ 1.g. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 29 years old. She graduated from high school in 2000. She attended college, but did not earn a degree. She is not married and has no children. She has been employed with her current employer since February 2010. She has been employed since 2001, except for the period from December 2004 to June 2005. She indicated she did not collect unemployment benefits during this period.

Applicant admits she owes the debts listed in SOR ¶¶ 1.a (\$2,677), 1.b (\$236), 1.d (\$3,552), and 1.f (\$246). She indicated these are all medical debts that were not covered by her insurance and were incurred due to a surgery she had. Applicant did not provide information as to when she had surgery. She stated in her answer that she will be paying off these accounts and provided specific amounts for her upcoming payments. She did not include any evidence that she has communicated with the creditors to establish a repayment plan or evidence that any payments have been made.¹

Applicant stated in her answer that the debts in SOR ¶¶ 1.c (\$151), 1.e (\$852), and 1.f (\$90) have been paid. Credit bureau reports list these debts as delinquent. She did not provide evidence to show she has paid the debts.²

Applicant did not admit or deny the debt in SOR ¶ 1.g (\$1,500). She stated that she needed more information from the creditor. She did not provide evidence that she communicated with the creditor to obtain more information or to dispute the debt. This debt is listed as delinquent in the credit bureau report.³

Applicant explained in her interview with an Office of Personnel Management investigator that she experienced financial difficulties in 2004 following the death of her father. She stated she began to live outside her financial means at that time. She also experienced financial hardship in 2007 when she accepted a low-paying job because

¹ Item 4.

² Items 4, 8, 9.

³ *Id.*

she hoped it would offer her better opportunities, and then she was unable to pay her bills.⁴ No other evidence was provided regarding Applicant's financial situation.

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 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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.

⁴ Item 7.

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 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 eight delinquent debts totaling \$9,277. She has not provided evidence to show the debts are paid or resolved. 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 indicated that she has paid some of the alleged debts, is paying others, and does not have enough information regarding one debt. She did not provide evidence of her actions regarding her delinquent debts. Therefore, there is insufficient evidence to conclude that her financial problems are resolved and under control, or that it is unlikely she will experience them again in the future. AG ¶ 20(a) does not apply.

Applicant indicated that some of the debts were attributed to medical expenses that were not covered for surgery she had. She also indicated she had a period of unemployment and underemployment. These circumstances may have been beyond her control. However, without the details of the specific circumstances and information that she acted responsibly under those circumstances, I cannot apply AG ¶ 20(b). Applicant did not provide evidence of payments she may have made to creditors, or communications she may have had with creditors regarding payment plans. There is no evidence she received financial counseling or of changes she may have made to indicate the problem is being resolved, or is under control. Applicant did not provide documentation to substantiate the debt she disputes. I find AG ¶¶ 20(c), 20(d), and 20(e) do 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 is 29 years old. She began experiencing financial problems in 2004 after her father passed away and she was living beyond her means. She also had surgery and some of the medical payments were not covered by her insurance. Applicant indicated she paid some of her delinquent debts and has plans to pay the others, but she did not provide sufficient evidence to support her claim. 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 meet her burden of persuasion and 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.h:	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.

Carol G. Ricciardello
Administrative Judge