



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



In the matter of:)
)
) ISCR Case No.10-06127
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

August 9, 2011

Decision

DUFFY, James F., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 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.

On May 23, 2011, Applicant answered the SOR. On June 1, 2011, she requested a hearing. The case was assigned to me on June 21, 2011. DOHA issued a notice of hearing on June 28, 2011, and the hearing was convened as scheduled on July 14, 2010. The Government offered exhibits (GE) 1 through 3, which were admitted into

evidence without objection. Applicant testified, but did not call any witnesses or offer any exhibits. DOHA received the hearing transcript (Tr.) on July 22, 2011.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. She has worked for her current employer for about four years. She graduated from high school in 1995 and attended one semester of college. She is married and has four children, ages 10, 12, 13, and 17. This is the first time that she has applied for a security clearance.¹

The SOR alleges 32 delinquent debts totaling about \$63,641. In her answer, Applicant admitted 19 of the alleged debts totaling about \$47,600. Her admissions are incorporated herein as findings of fact. Credit reports admitted into evidence provide substantial evidence of the denied debts.²

Applicant attributes her financial difficulties to periods of unemployment and medical expenses that were not covered by insurance. The SOR and credit reports reflect that she has 12 delinquent medical debts totaling about \$4,842. She has been continually employed since March 2003. Before then, she worked temporary jobs, but not on a steady basis.³

Applicant has not attempted to contact any of the creditors to make arrangements to resolve the delinquent debts. She could not recall the last time she made any payments on these debts. She testified that the debt in SOR ¶ 1.o, a judgment filed in June 2004 in the amount of \$29,451, resulted from her cosigning a vehicle lease agreement with the father of one of her children. She indicated that he was primarily responsible for that debt, but acknowledged she was also responsible for it. She testified that she denied some of the debts because they were duplicates of other debts. When asked to identify the duplicate debts, she was not able to point out them.⁴

In 2010, Applicant obtained financial counseling through a prepaid legal program at work. She currently has no credit cards. She is up-to-date on her current bills, but is just making ends meet. She does not maintain a monthly budget and has no money in savings. She receives child support for two of her children. Her husband is a laborer

¹ Tr. at 5-6, 19, 21, 26; GE 1.

² Applicant Answer to the SOR; GE 2, 3. Applicant admitted the delinquent debts in SOR ¶¶ 1.a, 1.d, 1.e, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, 1.q, 1.t, 1.v, 1.y, 1.ab, 1.ac, and 1.ae and denied the remaining allegations. GE 2 reflects that the amount of the debt listed in SOR ¶1.s is \$751, instead of \$771 as the SOR alleged.

³ Tr. at 18-21; GE 1. Delinquent medical debts are alleged in SOR ¶¶ 1.b through 1.m.

⁴ Tr. at 17-18, 21-22, 27-29.

whose work opportunities fluctuate. She indicated that she did well on her last performance evaluation.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 that 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

⁵ Tr. at 22-30.

applicant concerned.” See also Executive Order 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 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated delinquent debts that she was unable or unwilling to satisfy over a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 has 32 delinquent debts totaling over \$63,000 that remain unresolved. Her financial problems are ongoing, significant, and cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant experienced intermittent periods of unemployment prior to March 2003 and incurred medical expenses that were not covered by insurance. For the past eight years, however, she has been gainfully employed. Despite such steady employment, she took no meaningful steps to address her past-due obligations. While her periods of unemployment and medical problems were conditions outside her control, she failed to show that she acted responsibly in the intervening period to address her debts. AG ¶ 20(b) is not applicable.

Applicant provided no proof of payments on the alleged debts. Although she met with a financial counselor in 2010, she has not yet attempted to contact the creditors. Indeed, no evidence was presented to show that these debts are being resolved or are under control. AG ¶ 20(d) does not apply and AG ¶ 20(c) is partially applicable.

Applicant indicated that some of the alleged debts were duplicates, but was not able to identify them. Although she denied various debts, she presented no documentation to establish that she had a legitimate basis for disputing them. AG ¶ 20(e) is not applicable.

At this point, Applicant has failed to mitigate the alleged delinquent debts. Her financial problems remain a security concern.

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):

- (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

