



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



In the matter of:)
)
) ISCR Case No. 10-06143
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a security clearance to work in the defense industry. Applicant is indebted to one creditor for \$39,000. Although Applicant's financial problems were caused by an event beyond her control, she has not taken any steps to resolve or reduce her delinquent debt. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Reasons (SOR) notifying Applicant that it was unable to find that it is clearly consistent with the national interest to continue her access to classified information and recommended that her case be submitted to an administrative judge for a determination whether to revoke her clearance. The SOR detailed the reasons for the action under Guideline F (financial considerations).

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on October 27, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 31, 2012, and chose not to submit a response. Accordingly, the documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 8. The case was assigned to me on March 30, 2012.

Findings of Fact

Applicant is a 28-year-old employee of a federal contractor. She has worked for her current employer since March 2010. She is married with no children. The SOR contains one allegation that Applicant is indebted to one creditor for \$39,000. She admits she is responsible for the debt, a home equity line of credit (HELOC) loan.²

Applicant purchased her home in 2005. Later that year, she and her husband jointly opened a HELOC. The couple was able to pay the loan and all of their other expenses until 2008, when Applicant's husband injured himself at work. As a result of the injury, he could not work, forcing the couple to live on Applicant's income alone. Soon, the couple fell behind on their bills. Unable to obtain a mortgage modification based on financial hardship, the couple lost their home to foreclosure in the fall of 2008. They stopped making payments on the HELOC.³

Applicant's salary continues to be the sole source of income for herself and her husband, who is now a full-time student at a technical school. Applicant expects her husband will re-enter the workforce after he completes school in early 2012. To date, she has not contacted the creditor or made any arrangements to resolve the delinquent HELOC. Applicant promises to pay the debt in the future, after she has resolved smaller debts. Other than two credit card debts listed on her October 2011 personal financial statement, she did not provide any information about the repayment of non-SOR debts.⁴

² GE 1, 3 – 4.

³ GE 1, 4, 7-8.

⁴ GE 4 -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, 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, 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.

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 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.

Both disqualifying conditions apply. After her husband became unable to work, Applicant could not meet the couple's financial obligations on her salary alone. As a result, she could not continue payment on her HELOC, and it became delinquent.

Of the mitigating conditions available under AG ¶ 20, two are potentially applicable to this case:

(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; and

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The event that caused Applicant's financial problems, her husband's loss of income after a workplace injury, was beyond her control. Before this incident, it appears that Applicant maintained a positive credit history. However, she receives only partial credit under AG ¶ 20(b) because she has failed to provide evidence that she acted responsibly toward her financial obligations under the circumstances.⁵ She has not provided any information to show what adjustments she made to her finances, if any, in response to her financial problems. Furthermore, she has not made any effort to repay or otherwise resolve the her outstanding delinquent debt.

Consequently, Applicant has failed to mitigate the Guideline F concerns raised in this case. In reaching this conclusion, I gave due consideration to the whole-person concept. Applicant's financial problems were caused by an event beyond her control and are not indicative of poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Nevertheless, Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. An applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct, that is, actions which evidence a serious intent to effectuate the plan.⁶ She has failed to do so. Her promises to repay the debt in the future are not sufficient to mitigate the security concern raised by her outstanding delinquent debt.

This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended due to Applicant's current circumstances. However, in the future, she may well demonstrate persuasive evidence of her security worthiness.

⁵ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008)

⁶ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).

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
Subparagraph 1.a.:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

Nichole L. Noel
Administrative Judge