



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



In the matter of:)
)
) ISCR Case No. 10-06372
)
Applicant for Security Clearance)

Appearances

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

November 21, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concerns. She has accumulated over \$30,000 in bad debt and failed to establish that her financial problem is under control. Clearance is denied.

Procedural History

On March 10, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.¹ The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges the security concern under Guideline F (Financial Considerations). Applicant’s response to the SOR was received by DOHA on May 31, 2011 (Answer). She admitted 13 of the 16 debts alleged in the SOR and requested a hearing.

¹ This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

On June 30, 2011, Department Counsel filed its ready-to-proceed. I originally scheduled the hearing for September 14, 2011 but, due to technical issues with the video teleconference, the hearing was rescheduled for October 27, 2011.²

At hearing, Department Counsel offered Government Exhibits (GE) 1 through 9, which were admitted into evidence without objection. Department Counsel also submitted a demonstrative aide setting forth each of the debts and their current status, which was marked and accepted without objection as Hearing Exhibit II. Applicant appeared at the hearing and testified on her own behalf. She did not offer any exhibits and I kept the record open until November 3, 2011, to provide her the opportunity to submit matters for my review. She did not submit any documents for my review. The transcript (Tr.) was received on November 4, 2011.

Findings of Fact

Applicant is 31 years old. She received her bachelor's degree in 2002 and her master's degree in literacy education in 2004. She is a single mother raising her three year old son. From about May 2002 to approximately November 2009, she worked as a substitute teacher with periods of unemployment and underemployment. She has been with her present employer, a government contractor, since November 2009.³

Applicant's financial troubles began shortly after graduating from college when she started to accumulate a significant amount of credit card debt. At one point, she had eight separate credit cards. Applicant recognizes that her financial problem stems from "being completely irresponsible" with her finances.⁴ She admits 13 of the 16 debts alleged in the SOR that total approximately \$31,000.⁵ (SOR, ¶¶ 1.a – 1.e, 1.g – 1.j, 1.l – 1.n, and 1.p).⁶ Two of these debts resulted in judgments with a combined amount of over \$17,000. (SOR, ¶¶ 1.a and 1.b). She recently made arrangements to satisfy one of these judgments, which has been outstanding since 2006.⁷ (SOR, ¶ 1.b). She has not made arrangements to satisfy the other debts listed in the SOR that she admits owing.⁸

² As a time management tool, I issued a prehearing order (Hearing Exhibit I) requiring the parties to serve one another and me their anticipated exhibits prior to the hearing.

³ GE 1; Tr. at 24-28.

⁴ Tr. at 22-23 and 44.

⁵ Answer, Tr. at 30-45.

⁶ Applicant denied SOR ¶¶ 1.f, 1.k, and 1.o, which together total about \$7,000. These debts are reflected in her credit reports and, as to 1.f, she claims to have been paying the debt back as of the filing of her Answer (she subsequently stopped paying this debt back). Tr. at 32-33 and 35-37. As these debts do not change the ultimate conclusion in this case, I find in Applicant's favor as to these debts.

⁷ Tr. at 33-34.

⁸ Tr. at 31-32.

Applicant has not taken a financial counseling course and does not have a savings account. She claims to have reduced her monthly expenses and is working 5 to 15 hours a week overtime to pay her bills, but has been late on her rent every other month or so over the past year. Her son's father does not pay child support and is currently living with her. As he is unemployed, he stays at home with their child obviating the need and expense of day care. She does not have the money to satisfy her overdue creditors and hopes to pay off her debt in the next five years. She no longer has credit cards, but owes federal and state taxes from last year. She recently setup a payment plan with the taxing authorities to pay her overdue taxes. Her current credit report reflects additional bad debt.⁹ Applicant believes that bankruptcy may be her only recourse at this point.¹⁰ She testified as follows regarding her financial predicament:

What I really want to do is look into filing bankruptcy because, at this point, I'm in way over my head. . . . I haven't paid these debts in years, and I don't have enough extra money, in my paychecks, to -- it would take me forever, at this point, to pay these people off. . . . I guess at this point, it is very overwhelming for me. So, you know, I kind of just need to -- I think that would be the best option, is to just look into bankruptcy.

At this point, you know, I really just wanted to discuss, you know, my financial situation in the past. Now, currently I am, and I still struggle, I am not going to deny that. You know, I do still struggle but I am trying to, slowly but surely, make it better for myself, and for my son, you know, which is why I -- of course I would like the clearance. Also the clearance, at this point, is prohibiting me from getting any promotions of significant value at my job, which is another reason why I would like the clearance. But, you know, at this point I just need to kind of work on my financial situation and go from there.¹¹

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.

⁹ Applicant's tax debt and the new delinquent debts reflected on her current credit report were not alleged in the SOR. However, as Applicant was on notice that her finances were at issue, I will consider this information in assessing the mitigation evidence and whole-person factors. ISCR Case No. 09-06770 (App. Bd. Nov. 8, 2002); ISCR Case No. 01-07656 (App. Bd. Aug. 29, 2002).

¹⁰ Tr. at 28-29, 45-54; GE 2; GE 3; GE 9.

¹¹ Tr. at 51-52 and 54-55.

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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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 of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at 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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's accumulation of over \$30,000 in bad

debt, including two judgments that go back several years, directly implicates this concern. It also establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness . . .

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹² Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The mitigating conditions are:

- (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 and provides documented proof to substantiate the basis of the dispute.

None of the mitigating conditions apply. At this point, Applicant has not put her financial house in order. She still does not pay her bills on time and continues to accumulate bad debt. Although periods of unemployment, underemployment, and lack of financial support from her son's father all contributed to her financial situation, she failed to act responsibly under the circumstances. Her financial situation is primarily due

¹² ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

to a long history of over spending and accumulation of a substantial amount of credit card debt, followed by defaults on her other financial obligations. She only recently contacted one of her overdue creditors to resolve a long-standing judgment, but has not taken a financial counseling course or otherwise demonstrated that her financial situation is under control. Applicant is clearly a hard worker and a devoted mother who will hopefully be able to resolve her past indebtedness in a responsible fashion in the future. However, at this juncture, she failed to meet her burden to mitigate the financial considerations concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹³ I have considered all the favorable and extenuating factors in this case. Applicant's decision to enter the teaching field is admirable and speaks volumes as to her character. However, she failed to manage her finances in a responsible fashion in light of her decision to enter a profession that did not provide her with a consistent paycheck or a high wage. She has now secured a full-time job with a steady paycheck. She works a significant amount of overtime each week to pay her bills and provide for her son. As noted above, however, "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." AG ¶ 2(b). Applicant has a large amount of unresolved bad debt and failed to dispel the significant security concern raised by the manner in which she has handled her financial affairs.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.e, 1.g – 1.j, 1.l – 1.n, and 1.p: **Against Applicant**

Subparagraphs 1.f, 1.k, and 1.o: **For Applicant**

¹³ (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.

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant's request for access to classified information. Applicant's request for a security clearance is therefore denied.

Francisco Mendez
Administrative Judge