



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-06819 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

September 22, 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 14, 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 April 22, 2011, Applicant answered the SOR and requested a hearing. The case was assigned to me on August 3, 2011. DOHA issued a notice of hearing on August 10, 2011, and the hearing was convened as scheduled on August 30, 2011. The

Government offered exhibits (GE) 1 through 6 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as hearing exhibit (HE) 1. Applicant testified and offered exhibits (AE) A through F, which were admitted into evidence without objection. The record was left open until September 13, 2011, to provide Applicant an opportunity to submit additional matters. Applicant did not submit any additional matters. DOHA received the hearing transcript (Tr.) on September 9, 2011.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. She has worked for her current employer since December 2009. She is a high school graduate. She is currently not married, but has been married and divorced three times. She has two daughters, ages 12 and 21. Her older daughter is living on her own. Applicant receives \$500 per month in child support for her younger daughter. This is the first time that she has applied for a security clearance.¹

The SOR alleged that Applicant had 14 delinquent debts totaling about \$30,883, and also had a mortgage that went to foreclosure with a deficiency balance of \$203,162. These debts were listed on credit reports obtained on April 7, 2010; November 2, 2010; and June 9, 2011. In her Answer to the SOR, Applicant admitted each of the allegations (SOR ¶¶ 1.a through 1.o), but denied the security concern paragraph (SOR ¶ 1). Her admissions are incorporated herein as findings of fact.²

Applicant attributed her financial difficulties to the downturn in the housing market in 2008 and failed marriages in 2005 and 2009. From April 2001 to November 2008, she worked for a bank. She was first a customer service representative and then a mortgage loan officer. During that employment, her annual salary rose from \$22,000 to \$80,000. She voluntarily left that job for a better job opportunity as a mortgage loan officer. As the housing market collapsed in 2008, she began to struggle financially because her salary was based on commissions. From November 2008 to April 2009, she estimated her total income was \$1,200. In February 2009, she married her third husband. Shortly thereafter, she discovered that he was using illegal drugs and drinking. She could not tolerate his behavior or expose her daughters to it. She separated from him in April 2009. In May 2009, she was unemployed for less than a month when her company closed. In May or June 2009, she received emergency medical treatment for abdominal pains and did not have health insurance to cover those expenses. From June to October 2009, she was employed as a mortgage consultant before moving to another state at the end of October 2009. In the new state, she held a

¹ Tr. at 4-5, 27, 31-32, 40-41, 102-103; GE 1.

² Applicant's Answer to the SOR; GE 1-6.

temporary job for two months before obtaining her current employment. She was granted her latest divorce in September 2010.³

In May 2007, Applicant purchased a home. The home was financed with a mortgage of \$203,162 (SOR ¶ 1.o). This was a 30-year fixed mortgage with a monthly payment of \$1,477. In late 2008, she encountered difficulty making the mortgage payments but was able to negotiate with the lender to have two months of delinquencies added to the end of the mortgage. Starting in February 2009, her husband agreed to make the mortgage payments. He made the February payment. He told her that he made the payments in March and April 2009, but failed to do so. As noted above, they separated in April 2009. She vacated the home in May 2009. Foreclosure proceedings on the home began in November 2009 when the mortgage had a balance of about \$215,665. The bank notified her that, if the home sold for less than the balance on the mortgage, she would be held responsible for paying the difference. At the hearing, she indicated that she did not know if the home was sold during the foreclosure proceedings. She indicated that, when she last spoke to a friend from her former neighborhood several months after vacating the home, the home had not been sold. The mortgage is not listed on her two most recent credit reports. She has not been in contact with the bank to confirm the status of the foreclosure proceedings. Insufficient information has been presented to conclude this mortgage has been resolved.⁴

Applicant incurred the delinquent debts in SOR ¶¶ 1.a through 1.n from 2005 to 2009. Since 2009, she has neither made any payments to those creditors nor contacted them to arrange settlements. She is meeting her current financial obligations and has not incurred any new delinquent debts since 2009. She has not used a credit card in years.⁵

Applicant has consulted with two bankruptcy attorneys. As a prerequisite to filing a bankruptcy petition, she completed a financial counseling course online in August 2009. At the time of the hearing, she had not filed bankruptcy. She has been somewhat reluctant to file bankruptcy, but believes it is her only option and intends to do so. She plans to wait until January 2012 to obtain her tax refund to enable her to pay the bankruptcy filing fees and attorney's fees.⁶

Applicant submitted four reference letters. Her manager described her as an extremely valuable asset with extraordinary people skills. The manager indicated that, in his 41 years of employment, he has never met anyone he would trust more than her.

³ Tr. at 27-40, 43-48, 70-73, 97, 106-110; GE 1, 2, 3; Applicant's Answer to the SOR. For October and November 2009, Applicant worked as a mortgage loan processor through a temporary employment agency. Her second marriage was from November 1997 to August 2005.

⁴ Tr. at 41-56; GE 2, 5, and 6.

⁵ Tr. at 62-68, 73-75, 100, 104-106; GE 4, 5, 6. The debt in SOR ¶ 1.b has been delinquent since 2005.

⁶ Tr. at 53-62, 100, 103-104; GE 2, 3; Applicant's Answer to the SOR.

Her supervisor indicated that she is very reliable, conscientious, and customer oriented. Her supervisor recommends her for a security clearance and has confidence she can be entrusted to protect classified information. Two coworkers indicated that she is a trusted employee who has an exceptional work ethic. They recommend her for a security clearance. Applicant is involved in civic and charitable projects and received a Community Service and Volunteerism Award at work in 2011. Her employee performance review ending in September 2010 indicated that she performs at the “fully satisfactory” level.⁷

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

⁷ AE A-F.

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 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 a number of delinquent debts and was unable or unwilling to satisfy her obligations for 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; and

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

Since obtaining her current job in 2009, Applicant has been current on her bills and has incurred no new delinquent debts. Nevertheless, she has multiple delinquent debts that are ongoing and significant.

Applicant's failed marriages in 2005 and 2009, the downturn in the housing market in 2008, and her medical problem in 2009 were conditions beyond her control and contributed to her financial problems. To obtain full credit under AG ¶ 20(b), however, both prongs of that mitigating condition, *i.e.*, conditions beyond the individual's control and responsible conduct, must be established. Here, Applicant has failed to establish that she acted responsibly under the circumstances. In this regard, Applicant has taken no meaningful action to resolve the delinquent debts for over a year and a half even though she has been employed during that period. She provided no proof of payments or settlement arrangements for the delinquent debts. She has not contacted the creditors since 2009. She has consulted with two attorneys about filing Chapter 7 bankruptcy and completed the requisite financial counseling for filing bankruptcy. However, she had not filed a bankruptcy petition prior to the hearing. These circumstances do not support a determination that she acted responsibly in addressing the delinquent debts since obtaining her current job. At the time of the hearing, her financial problems were neither being resolved nor under control. Moreover, based on the record evidence, I cannot find that her financial problems arose under circumstances that are unlikely to recur or that they do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(b) applies partially. AG ¶¶ 20(a), 20(c), and 20(d) do not apply.⁸

At this point, Applicant has failed to take meaningful action to resolve her financial problems. Her delinquent debts 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):

⁸ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). In that analysis, a factor to consider is whether the applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep his or her debts current.

(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 relevant 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 those guidelines, but some warrant additional comment. I considered Applicant's years of service to her employers. Her current manager, supervisor, and coworkers find her to be very trustworthy and reliable. They recommend that she be granted a security clearance. Nevertheless, she has not addressed her financial problems in a responsible manner and failed to provide sufficient evidence to mitigate the security concerns. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings 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.o: 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.

James F. Duffy
Administrative Judge