



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-08778

Appearances

For Government: Paul Delaney, Esquire, Department Counsel

For Applicant: *Pro se*

03/12/2012

Decision

HOWE, Philip S., Administrative Judge:

On April 30, 2010, Applicant submitted her electronic Security Clearance Application (SF 86) (e-QIP). On August 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 31, 2011. She answered the SOR in writing on October 13, 2011, and requested a hearing before an administrative judge. DOHA received the request on October 17, 2011. I received the case assignment on November 22, 2011. DOHA issued a Notice of Hearing on November 23, 2011, and I convened the hearing as scheduled on December 8, 2011. The Government offered Exhibits 1 through 6, which were received without objection.

Applicant testified on her own behalf and submitted Exhibits A through K, without objection. DOHA received the transcript of the hearing (Tr.) on December 19, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b to 1.k, 1.l, 1.m to 1.u, 1.v, 1.z, 1.aa, 1.cc, 1.dd, 1.gg, 1.ii, and, 1.kk to 1.ll of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.w, 1.x, 1.y, 1.bb, 1.ee, 1.ff, 1.hh, and 1.jj of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 53 years old, married, and has two children. She has a master's degree in computer science. Her husband is retired. One daughter is in high school and the other daughter has four children and works low-paying jobs. Applicant helps that daughter financially, including giving the daughter her car to drive while Applicant rides the bus to and from work every day. (Tr. 60, 61, 126; Exhibit 1)

Applicant has 36 delinquent debts listed in the SOR (Subparagraphs 1.a to 1. jj). Two of the alleged delinquent debts are duplicates (Subparagraphs 1.j and 1.cc for \$29 owed on a medical account) making the actual number of delinquent debts 35. These debts total \$12,655. Three of the listed debts are loan payments due on three loans (Subparagraphs 1.v, 1.w, and 1.x). The total balance of these three loans is \$66,006. Applicant used two student loans to obtain her master's degree in 2004. Applicant stated she was paying her student loans. Two additional allegations pertain to Applicant's filing of a Chapter 13 bankruptcy action in January 2003 that was converted to a Chapter 7 bankruptcy and discharged in February 2006 (Subparagraph 1.kk), and Applicant's first bankruptcy filing of a Chapter 7 bankruptcy in May 1994 that was discharged in July 1994 (Subparagraph 1.ll). (Tr. 11-59, 118; Exhibits 1-6, A-C),

In September 2011 Applicant sought professional debt assistance from a debt management company. She hired this company to pay her debts with the money she sends them each month. Applicant pays the company \$900 monthly through a bank electronic deduction to resolve her delinquent debts, all of which are listed in the SOR. She has not enrolled 10 debts totaling \$2,104 in the repayment plan (Subparagraphs 1.e, 1.f, 1.p, 1.t. 1u, 1.bb, 1.ee, 1.ff, 1.hh, and 1.jj). These debts she has not been able to identify, denies she owes them, or forgot to include them in the repayment plan. Any debts she owes will be placed in the repayment plan, when she is certain she owes them. Applicant paid one delinquent debt for \$342 owed to a payday lender (Subparagraph 1.y). Applicant stated she would put into the repayment plan any debt that should be paid. The repayment plan is scheduled to continue for the next 16 months. Applicant included in the debt repayment plan one debt not alleged in the SOR. The debt repayment document from the company shows a total balance of debts in the amount of \$10,747. (Tr. 11-59; Exhibits 1-6, A-C)

Applicant's 35 delinquent debts listed in the SOR include 19 medical accounts (Subparagraphs 1.b-1.k, 1.m-1.u, 1.cc). These debts total \$2,587. (Tr. 11-59; Exhibits 1-6, A-C)

Applicant completed her e-QIP on April 30, 2010. She answered Section 15 "Military History" in Question 15 (a) with a, "No," concerning her service in the U.S. military. She denied in Question 15 (c) that she ever received a discharge that was not honorable. In fact, Applicant served in the U.S. Army for 10 years of active duty and is now a retired Army reservist. She had a top secret clearance while on active duty. Applicant acted as a security clearance investigator during parts of her Army career. Applicant could not explain how she answered Question 15 (a) incorrectly. Section 15 was not an allegation in the SOR but rather shows Applicant answered a question incorrectly that was inconsistent with her history and other answers in the same section of the e-QIP. (Tr. 65-69; Exhibit 1)

The SOR alleged Applicant also answered the Section 26 (a) question about ever filing bankruptcy in the past seven years with a "no," which is true as to the filing date in 2003 but not regarding the bankruptcy discharge date in 2006. The SOR alleges Applicant did not answer Section 26 (g) correctly when she denied ever having bills turned over to a collection agency, Section 26 (m) as to whether she was over 180 days delinquent in the past seven years on any debt, and Section 26 (n) whether she was currently over 90 days delinquent on any debt. Applicant claimed she made a mistake in answering those questions as she did. When she answered Section 26 on the security clearance application, she thought she was paying on every debt she owed. Applicant testified she knew all debts were on her credit record, so she would not have gained anything by falsely answering Section 26. Applicant stated she was not certain that she owed some of her debts as alleged when she completed the application. She described herself as "stupid" about her finances twice in testimony addressing the falsification issue. (Tr. 59, 66, 75, 97-111; Exhibit 1)

Applicant denies having any credit cards. She does not have a savings account. Applicant has a checking account in which she currently has \$100. Applicant and her husband have a monthly net income from her salary and his pensions plus social security payments of \$7,000. Their monthly expenses total \$5,649. Of the net remainder amount, Applicant pays the debt management company \$900, leaving her with \$200 per pay period for discretionary spending. Applicant spent \$2,000 last year purchasing new furniture and a television set from a store that extends credit to persons who have poor credit histories. Applicant and her husband drive cars that were used when they purchased them. As stated, Applicant loans her car to her oldest daughter for the daughter's daily use because of the daughter's poor financial status caused by minimum wage jobs held by herself and her husband with which they support four children. Applicant has never had any financial counseling. (Tr. 89-127)

Applicant also stated that she was living paycheck to paycheck, was overwhelmed and confused by her debts, suffered "hard years" financially, and did not have extra money to pay her debts during those years. Applicant admitted her financial

problems have occurred for the past several years. Her earliest delinquent debts on the credit reports submitted are dated 2006. Applicant refinanced her mortgage a few years ago and took some money from that transaction with which she paid some bills, but she could not remember which bills she paid. Applicant repeatedly demonstrated a lack of understanding about the origin and current status of her delinquent debts. She borrowed money from pay day loan companies and has about \$1,500 remaining to pay. (Tr. 11-59, 79, 80, 84, 97-110, 127, 136; Exhibits 2-4)

Applicant submitted seven character letters from a supervisor and co-workers, in addition to persons with whom she works on government projects. They attest to Applicant's hard work, integrity, honesty, and dedication to her work goals. The letter writers also state Applicant produces a quality work product. (Exhibits E-K)

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 useful 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 (AG ¶ 2(a)). 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Four conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant filed two bankruptcy petitions in 1994 and 2003. She received Chapter 7 bankruptcy discharges in 1994 and 2006 as a result of those filings. After her latest bankruptcy discharge Applicant incurred delinquent debts, accumulating \$12,655 in delinquent debt from 2006 to the present time that was unpaid. She did not begin to

address the payments of those debts until September 2011. Applicant has 35 delinquent debts listed in the SOR. AG ¶ 19 (a) and (c) apply.

Applicant in each of the past two decades and now this decade spent money irresponsibly and beyond her financial means to repay the debts incurred. She has excessive indebtedness consistently. Applicant used the federal bankruptcy law to resolve her previous two episodes of excessive indebtedness. Now she is using a debt repayment company to pay her latest accumulation of delinquent debt. AG ¶ 19 (b) and (e) apply to these facts.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. One condition may be applicable:

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

Applicant admitted repeatedly during the hearing she was overwhelmed with her debts and could not develop any plan herself to pay them. In 2011 she hired a debt management firm to use the \$900 monthly she pays it to repay the delinquent debts in an orderly manner.

All debts in the SOR are included in the plan except for 10 debts totaling \$2,104, which she is not paying at the present. Applicant has \$10,551 of the SOR alleged debts in the repayment plan. She has paid one debt for \$342. She is making payments herself on her student loans. Applicant uses an automatic deduction from her bank account to pay the debt management company.

Applicant ignored her delinquent debts because she did not understand the extent of them and was not able to formulate a plan herself to repay them. She was unable to control her spending and structure regular plans to repay them in a timely manner. Applicant admitted she was overwhelmed by her financial situation and confused as to the best course of action to take to resolve the debts. She has a history of using the federal bankruptcy court twice to repay her debts. Finally, Applicant decided to use a debt management company to resolve her delinquent debts.

Applicant is making an effort to rid herself of this financial burden. and achieve financial stability. Therefore, AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay her delinquent debts.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. One condition may apply:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not list her delinquent debts in answer to Section 26 of the e-QIP that she completed on August 5, 2010. Applicant answered as follows: Section 26 (g) that she did not have any bills or debts turned over to a collection agency in the past seven years; Section 26 (m) that she has not been delinquent over 180 days on any debt in the past seven years; and, Section 26 (n) that she was not currently over 90 days delinquent on any debt. In fact, Applicant's financial history was such that all these answers should have been in the affirmative.

However, Applicant's incorrect answers to Section 26, when coupled with her answer to Section 15 about her military service, demonstrate she marked the answers without thinking and without specific knowledge of her debt status. Applicant filed bankruptcy twice to rid herself of delinquent debts because she could not think of how to resolve them except through that process. Applicant's testimony and demeanor at the hearing show she was confused when she completed the e-QIP. It is obvious from the totality of the information in the record and documents submitted that Applicant had no intention to deliberately falsify any answer to Section 26 questions about her finances, but was unaware of the extent of the delinquent debts. Realizing she needed help to resolve her debts, she contracted with a debt management company to establish a repayment plan. On the basis of this information, there was no deliberate falsification of financial information, but rather a negligent series of answers to Section 26.

AG ¶ 17 provides seven conditions that could mitigate security concerns. The absence of a deliberate falsification makes it unnecessary to apply any of the mitigating conditions.

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 an 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 for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 facts and circumstances surrounding this case. Applicant has a history of being unable to control her spending, resulting in the necessity that she has sought three times to resolve the debts by means other than her own initiative. Two such efforts were through the bankruptcy courts so the creditors did not get paid. Applicant was an educated adult at all the relevant times she incurred these delinquent debts. Applicant anticipates that her financial situation will improve as the debts are paid. She earns sufficient funds to pay her debts and save money. Her supervisor and co-workers, who wrote her character letters, know of Applicant’s financial condition, so there is no potential for pressure, coercion, exploitation, or duress. In addition, the work of the debt management company shows she is not hiding her financial situation. The likelihood of continuation or recurrence is slight because of the commitment Applicant has demonstrated for resolving her debts and preventing similar problems from occurring in the future. Applicant appeared sincere and contrite about her past conduct and serious about changing her financial situation.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations and personal conduct security concerns. I conclude the “whole-person” concept for Applicant.

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: FOR APPLICANT

Subparagraph 1.a to 1.ii: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge