



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



In the matter of:)
)
) ISCR Case No. 10-09256
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul Delaney, Esquire, Department Counsel
For Applicant: *Pro se*

May 5, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On December 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on January 14, 2011, and elected to have her case decided on the written record. Department Counsel submitted the Government’s File of

Relevant Material (FORM) on February 23, 2011. The FORM was mailed to Applicant and it was received on March 9, 2011. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and submitted additional material. Department Counsel did not object to the material. The case was assigned to me on April 4, 2011.

Findings of Fact

Applicant admitted all the SOR allegations. Her admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 54 years old. She is not married and has no children. She earned a bachelor's degree. She has been employed with her current employer since November 2009. She was unemployed for about two months before her present job.

Applicant admitted she owes the three judgments in the SOR (SOR ¶ 1.a for \$1,384; ¶ 1.b for \$1,384, and ¶ 1.c for \$5,886). She admitted she owes the 15 delinquent debts in the SOR totaling approximately \$35,321.

Applicant said in her answer to the SOR that she made a payment arrangement for the debt in SOR ¶ 1.p (\$282) to make three monthly payments of \$93.97 beginning in January 2011 to pay the account in full. She provided a document showing the creditor made the settlement offer as she stated. She did not provide further documentation to show she made any of the payments.¹

Applicant indicated in her answer to the SOR that she contacted the creditor for the debt in SOR ¶ 1.q (\$11,956) and she agreed to pay \$125 a month toward the debt. She made one payment in October 2010, but did not provide further documentation to show she has made subsequent payments.²

Applicant indicated in her answer to the SOR that she has been making payments of \$210 on the debt in SOR ¶ 1.r (\$1,850) since November 2009 and the balance as of January 2011 was \$420. She also indicated that she had two payments remaining to satisfy the debt. She provided a document from the creditor acknowledging an arrangement and a balance on the debt as of December 2010 of \$1,010.31. No other documentation was provided.³ The remaining delinquent debts in the SOR are unpaid and unresolved.

Applicant admitted her financial problems began in approximately 2000 or 2001 when her mother became ill. They lived in different states and Applicant traveled several

¹ Item 3.

² *Id.*

³ *Id.*

times a year to help her. Each trip required her to spend money and miss work, which adversely impacted her finances. In 2003, she was laid off from her job. She obtained a new job, but the pay was less. Her mother passed away in May 2004. Her brother also became ill and had a stroke.⁴ Her brother passed away in April 2008. Applicant listed her periods of unemployment on her security clearance application from September 2009 to November 2009 and December 2003 to February 2004.⁵ Applicant's family responsibilities created a great deal of stress for her as she was responsible for making the family decisions.

Applicant indicated her personal financial statement that after she pays her monthly expenses and makes payments on three debts, two that appear to be listed on the SOR, she has a net remainder of \$314. In her response to the FORM, she indicated she had to buy a car because her previous one broke down. She did not provide additional information regarding the financial impact of this expense on her monthly expenditures. She stated in her answer to the FORM that she had a repayment plan for her delinquent debts. She planned to pay off one creditor and replace it with another. She stated: "It is my plan to pay off some of the smaller debts in full and not by a payment."⁶ No other information was provided.

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 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, these guidelines are applied 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

⁴ It is unclear exactly when her brother became ill.

⁵ Item 5.

⁶ Response to FORM.

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, 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 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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and the following are potentially applicable:

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

Applicant has 3 judgments and 15 delinquent debts totaling approximately \$43,900 that began accumulating in 2004. The judgments are not paid and the debts remain delinquent. She indicated that she is addressing three of the delinquent debts. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

(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.

Applicant indicated that she made arrangements to pay three of her delinquent debts. She provided documents to show she has contacted the creditors. It appears one of the debts has a reduced balance. However, Applicant has not provided documented proof to show she has made the payments she promised. The most recent document is from December 2010. Applicant has not addressed the other judgments or delinquent debts. AG ¶ 20(a) is not established because Applicant's delinquent debts are numerous and ongoing. There is insufficient evidence to conclude that she has taken action on her debts to conclude that they are unlikely to recur.

Applicant was confronted with her mother and brother's health issues and had to travel to visit them. This impacted her finances. She also experienced periods of unemployment and underemployment, which also impacted her finances. These conditions were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant's mother passed away seven years ago in May 2004 and her brother passed away three years ago in April 2008. Some of Applicant's delinquent debts are as small as \$47, \$52, and \$68, and remain unpaid. She has been steadily employed since November 2009, but has not taken an aggressive approach to addressing her financial problems. She failed to provide sufficient evidence to conclude that she has a solid financial plan for addressing her delinquent debts. She did not provide a detailed explanation for why she has not

been paying her smaller debts since she has been employed. I find Applicant failed to show she has acted responsibly under the circumstances and therefore AG ¶ 20(b) does not apply.

There is no evidence Applicant has received financial counseling. There is not enough evidence to conclude Applicant's problems are under control or being resolved. I find AG ¶ 20(c) does not apply.

Applicant provided documentation that she contacted three of her creditors. One of the debts has a reduced balance as of December 2010. She did not provide more recent documentation to show that consistent monthly payments are being made on the debts. There is insufficient evidence to conclude Applicant is making good-faith efforts to repay overdue creditors or otherwise resolve her delinquent debts. I find AG ¶ 20(d) does not apply.

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 the 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.

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 the 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 that guideline, but some warrant additional comment. Applicant traveled to visit her mother when she was ill and began experiencing financial problems in about 2000 or 2001. Her mother passed away in 2004. Her brother also had health problems and she traveled to visit him also. Applicant experienced some periods of unemployment and underemployment. Applicant indicated that it was the travel expenses that caused her to have financial problems. It has been over ten years since Applicant began experiencing financial problems. It has been three years since her brother passed away. Although her family's health issues impacted her finances, she

did not provide sufficient evidence to show her efforts over the years to control and budget for these expenses. Applicant has made minimal strides in addressing her financial problems. She does not have a structured financial plan or budget for resolving her delinquent debts. At this juncture, it is too early to conclude her finances are under control. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to meet her burden of persuasion and mitigate the security concerns arising under the guideline for Financial Considerations.

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
Subparagraphs 1.a-1.r:	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.

Carol G. Ricciardello
Administrative Judge