



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



In the matter of:)
)
) ISCR Case No. 10-09305
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

January 24, 2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Statement of Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on May 21, 2010. On June 22, 2010, and July 13, 2010, she was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) and provided information about her financial obligations. On July 13, 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 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 responded to the SOR on August 29, 2011, declined a hearing, and requested that her case be adjudicated on the written record. The Government compiled its File of Relevant Material (FORM) on October 19, 2011. The FORM contained documents identified as Items 1 through 11. By letter dated October 20, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on October 28, 2011. Her response was due on November 27, 2011. She did not submit additional information within the required time period. On January 3, 2012, the case was assigned to me for a decision.

Findings of Fact

The SOR contains 15 allegations of financial delinquency under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.o.). In her Answer to the SOR, Applicant admitted all 15 allegations. Applicant's admissions are admitted as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government. The record evidence includes Applicant's Answer to the SOR; her May 21, 2010 e-QIP; her personal subject interviews of June 22, 2010, and July 13, 2010; her responses to DOHA interrogatories;¹ and her credit reports of June 8, 2010, February 16, 2011, and October 14, 2011. (Item 4; Items 6 through 11.)

Applicant is 27 years old, never married, and without children. Since February 2009, she has been employed as an apprentice by a government contractor, and she seeks a security clearance for the first time. (Item 6.)

From 2002 to 2006, Applicant attended a university in the United States. In 2006, she earned a bachelor's degree. The SOR alleges that Applicant owes the U.S. Department of Education approximately \$25,369 for nine delinquent student loans, which are currently in collection status (SOR ¶¶ 1.e through 1.m.). (Item 1; Item 6.)

In addition to her student loan debts, Applicant owes a delinquent medical debt of \$185 (SOR ¶ 1.a.); a delinquent debt of \$344 to a telecommunications provider (SOR ¶ 1.b.); two delinquent debts to credit card providers, one for \$8,499 (SOR ¶ 1.c.), and one for \$4,037 (SOR ¶ 1.d.). Applicant also owes a creditor a debt of \$3,819, which is in collection status (SOR ¶ 1.o.), and she is responsible for a judgment debt of \$4,105 (SOR ¶ 1.n.). Applicant's 15 delinquent debts total approximately \$46,358. Her financial delinquencies are listed on her credit bureau reports in the record. (Item 1; Item 9; Item 10; Item 11.)

¹Applicant signed a notarized statement, dated June 14, 2011, affirming that she had read the investigator's summary of the interviews, and she adopted the summaries as accurately reflecting her interviews. (Item 7.)

In her June 2010 interview with an authorized investigator, Applicant acknowledged her student loan debts and reported that her mother had said she would pay Applicant's education debts. Applicant had assumed her mother was paying the debts until she obtained a copy of her 2009 credit report and realized that her mother had not done so. Applicant also reported that a former roommate had offered to pay the debt alleged at SOR ¶ 1.b., but had failed to do so. Applicant told the investigator that she accepted responsibility for all of her debts and planned to pay them herself. She stated that she planned to seek debt consolidation by the end of 2010 and begin paying her delinquent debts. (Item 7.)

In her June 14, 2011, response to DOHA interrogatories, Applicant stated that she had paid a judgment not alleged on the SOR, and she provided documentation corroborating her statement. She stated that she intended to set up a payment plan for the debt alleged at SOR ¶ 1.b. She reported that she negotiated a settlement of \$1,527.60 for the \$3,819 debt alleged at SOR ¶ 1.o. and had agreed to pay \$509.22 each month beginning February 11, 2011. She provided documentation corroborating the settlement agreement and the payment plan. Additionally, she provided documentation establishing that she had negotiated a payment plan for the debt alleged at SOR ¶ 1.d. She reported that she was making payments of \$150 a month to the creditor identified at SOR ¶ 1.d. and owed \$3,505.15 as of March 24, 2011. She did not provide documentation from the creditors corroborating receipt of her monthly payments on the debts alleged at SOR ¶¶ 1.d. and 1.o. (Item 8.)

In her response to interrogatories, Applicant also indicated that she would make an agreement in the future to address her delinquent student loans. She failed to provide information showing that she had addressed the other delinquent debts alleged on the SOR. (Item 8.)

Applicant did not provide a personal financial statement listing her monthly net income, her fixed monthly living expenses, her monthly debt payments, and assets such as savings accounts and retirement savings plans. The record does not reflect that Applicant has had financial credit counseling.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised 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, the administrative judge applies these 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security 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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt, much of which remains unresolved. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control, [such as] loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence 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" (AG ¶ 20(c)); that "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)); or that "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." (AG ¶ 20(e)).²

²A sixth possible mitigating circumstance applies when "the affluence resulted from a legal source of income." (AG ¶ 20(f)). This mitigating circumstance is not relevant in this case.

Applicant's financial delinquencies are recent, on-going, and occurred under circumstances that are likely to recur. She has been steadily employed by her current employer since February 2009.

The record reflects that Applicant has payment plans in place for 2 of the 15 debts alleged on the SOR. While this reflects a good-faith effort to repay those creditors, Applicant has not paid, settled, or otherwise resolved any of 13 remaining debts alleged on the SOR. She has not provided a personal financial statement showing her net monthly income, fixed monthly expenses, ongoing debt payment, and financial resources available for paying her debts. The record does not support a conclusion that Applicant has had financial credit counseling. There is insufficient record evidence to conclude that Applicant has sufficient financial resources to continue to satisfy her delinquent debts.

Applicant told the OPM investigator that she intended to satisfy all of her financial delinquencies at a future time. While she merits credit for establishing payment plans for two of her financial delinquencies, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply in mitigation to the security concerns raised by the facts in this case. However, I also conclude that AG ¶ 1.d. applies in part in mitigation in this case.

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 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.

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. As a young person, Applicant has accumulated significant delinquent debt. She is responsible for over \$46,000 in unsatisfied delinquent debt. While she appeared to be making good-faith efforts to

address 2 of her 15 delinquent debts, she failed to provide documentation that she has sufficient financial resources or a plan to address the remainder of her financial delinquencies, and this raises concerns about her judgment, reliability, trustworthiness, and ability to protect classified information.

Applicant requested a decision on the written record. She did not file objections or provide additional information in response to the FORM. The written record in this case is sparse. I am unable to conclude that Applicant met her burden of persuasion in mitigating the Government's allegations under the financial considerations adjudicative guideline.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies.

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.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraphs 1.e. - 1.n.:	Against Applicant
Subparagraph 1.o.:	For 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.

Joan Caton Anthony
Administrative Judge