



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



In the matter of:)
)
) ISCR Case No. 10-09931
)
Applicant for Security Clearance)

Appearances

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

August 9, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, 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 April 13, 2010. On June 16, 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 February 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 March 18, 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 April 19, 2011. The FORM contained documents identified as Items 1 through 7. By letter dated April 19, 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 May 4, 2011. Her response was due on June 3, 2011. She did not file additional information within the required time period. On July 27, 2011, the case was assigned to me for a decision.

Findings of Fact

The SOR contains nine allegations of financial delinquency under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In her Answer to the SOR, Applicant admitted eight of the allegations (SOR ¶¶ 1.b. through 1.i.). She denied the debt alleged at SOR ¶ 1.a. 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 April 13, 2010 e-QIP; her adoption of the summary of a personal subject interview, dated June 16, 2010; her responses to DOHA interrogatories;¹ and her credit reports of June 3, 2010 and February 8, 2011. (See Items 3 through 7.)

Applicant is 42 years old, married, and the mother of six children, ages 14 through 21. In 1993, she earned a bachelor's degree. Since June 2006, she has worked for her present employer, a government contractor, as a business manager. She seeks a security clearance for the first time. (Item 4.)

The nine delinquent debts on the SOR total approximately \$80,452. In her answer to the SOR, Applicant admitted eight of the delinquent debts, which totaled \$78,722. She denied a \$1,730 delinquent debt alleged at SOR ¶ 1.a. and stated: "I am currently having this collection investigated. I have never been contacted by the creditor or collection company. I have no knowledge of what this debt is for."²

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on June 16, 2010. On December 22, 2010, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that she had read the investigator's summary of the interview and, after making a minor non-substantive correction, she adopted the investigator's summary as accurately reflecting her interview. (Item 5.)

² In her June 2010 interview with the authorized investigator, Applicant admitted the debt alleged at SOR ¶ 1.a. She identified the debt as medical, and she agreed with the stated amount of the debt. The debt appears on her credit report of June 3, 2010. (Item 5 at 9; Item 6.)

In October 2006, Applicant was a plaintiff in lawsuit resulting from injuries her husband and children sustained in an automobile accident. The case was settled in Applicant's favor. Applicant did not recall the amount of the settlement. (Item 5.)

Applicant attributes some of her current delinquent debt to expenses incurred when she, her husband, and their six children traveled to a distant state to attend her mother's funeral in 2007. Additionally, in December 2007, Applicant's husband became ill with breathing problems. Despite treatment, his condition has grown worse, and he is unable to work. In her interview with the OPM investigator, Applicant stated that she is her family's only income earner. It is not clear from the record whether Applicant's husband receives disability compensation. (Item 3; Item 5.)

In 2006, Applicant and her husband purchased a home in a remote rural area of a large state. They moved to the rural home with their children. Prior to moving, they lived in a small city in the same state, and they owned a home there. Applicant told the OPM investigator that, since 2006, she had been unable to sell their home in the small city. In 2009, Applicant entered into a loan modification plan with the lender holding the mortgage on the city home. However, in October 2010, the home went into foreclosure. A past-due mortgage account of approximately \$27,111 on a loan balance of \$182,000 is alleged at SOR ¶ 1.h. In her answer to the SOR, Applicant reported that she is seeking another loan modification from the lender. (Item 3; Item 5.)

In her December 2010 response to DOHA interrogatories, Applicant stated that she had no payment plans in place for her delinquent debts. She stated that until she knew how much she owed each month on her mortgage loan modification plan, she would not begin to arrange payment of her other delinquent debts. (Item 5.)

In her answer to the SOR, Applicant again reported that the delinquent debts alleged at SOR ¶¶ 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., and 1.i. remained unsatisfied because she wanted to be certain she knew the monthly amount of her loan modification payment before undertaking plans to pay or satisfy her other delinquent debts. (Item 3.)

Applicant did not provide a personal financial statement listing her family monthly net income, her fixed monthly living expenses, her monthly debt payments, and assets such as savings accounts and retirement savings plans. She provided a pay stub from her employer showing net pay of \$1,920 for a two-week period in November 2010. The pay stub also showed year-to-date net income of \$42,000. (Item 5 at 18.)

The record does not reflect that Applicant has had financial credit counseling. In her interview with the OPM investigator, Applicant stated that her mother's estate was settled in early 2010, and she expected to receive an inheritance. She did not specify the amount of her inheritance, but she informed the investigator that she planned to begin paying her delinquent debts with proceeds from her inheritance in the late summer of 2010. The record does not establish that she has done so. (Item 5 at 7.)

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, and the record reflects that she has not satisfied any of the debts alleged on the SOR. 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)).³

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 June 2006. She incurred debt when she and her family traveled to her mother’s funeral in 2007. Additionally, her husband’s illness and inability to work resulted in diminished family resources. However, Applicant does not document how these events specifically affected her ability to meet her ongoing financial obligations. There is insufficient record evidence for me to conclude that Applicant acted responsibly to circumstances that may have been beyond her control.

Applicant has not paid, settled, or otherwise resolved any of the debts alleged on the SOR. She has not provided a personal financial statement showing her net family 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.

Applicant told the OPM investigator that she could not recall the amount she had received in a legal settlement in 2006, and there is no evidence that it was used to pay her debts. She also told the investigator that she expected to receive an inheritance from her mother’s estate that would enable her to pay or settle her delinquent debts at a future time. In determining an individual’s security worthiness, 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).

While Applicant denied the medical debt alleged at SOR ¶ 1.a., the debt was listed on her June 2010 credit bureau report. In her answer to the SOR, she claimed she had disputed the debt, but she failed to provide documentation to corroborate the dispute. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply in mitigation to the security concerns raised by the facts 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

³A 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.

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge