



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



In the matter of:)	
)	
)	ISCR Case No. 10-10447
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

September 29, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the file 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

On July 8, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). On May 16, 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 June 8, 2011. She did not request a hearing. The Government compiled its File of Relevant Material (FORM) on July 14, 2011. The FORM contained documents identified as Items 1 through 10. By letter dated July 21, 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 July 25, 2011. Her response was due on August 25, 2011. Applicant timely submitted additional information. Department Counsel did not object to Applicant's submission. On September 15, 2011, the case was assigned to me for a decision. I marked Applicant's submitted materials as Item A and entered them in the record.

Findings of Fact

The SOR contains three allegations of financial delinquency under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.c.). The three alleged delinquencies total approximately \$15,061. In her answer to the SOR, Applicant admitted the delinquencies and asserted that they had been paid, settled, or otherwise satisfied. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in her response to the FORM. The record evidence includes Applicant's Answer to the SOR; her July 2010 e-QIP; her adoption of the summary of a personal subject interview, dated February 18, 2011; her responses to DOHA interrogatories;¹ and her credit reports of July 22, 2010, January 10, 2011, and July 14, 2011. (See Items 3 through 9.)

Applicant is 24 years old, unmarried, and a high school graduate. She is estranged from her mother and stepfather and has supported herself since she was seventeen. She has pursued higher education but does not have a degree. Since December 2009, she has lived in a spouse-like relationship with her boyfriend, who is serving on active duty in the U.S. military. (Item 4; Item 8.)

Applicant is employed as an administrative assistant by a federal contractor. She has worked for this employer since April 2010, and she seeks a security clearance for the first time. (Item 4.)

When Applicant completed her e-QIP in July 2010, she identified three delinquent debts. She acknowledged that the \$3,359 debt alleged at SOR ¶ 1.c. had been turned over to a collection agency and later charged off as a bad debt. She also acknowledged that an \$8,559 delinquent account identified at SOR ¶ 1.b. and a \$3,143

¹Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on August 2, 2010. On February 18, 2011, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that she had read the investigator's summary of the interview and she adopted the investigator's summary as accurately reflecting her interview. (Item 8.)

delinquent account identified at SOR ¶ 1.a. were also charged off as bad debts. (Item 4.)

When she was interviewed by an authorized investigator, Applicant discussed the debts in further detail. She stated that she stopped paying the account identified at SOR ¶ 1.a. in December 2009 and had not had any further contact with the creditor. She identified the debt alleged at SOR ¶ 1.b. as a credit card opened in October 2006. She did not recall when the account was closed, and she said she had no contact with the creditor. Applicant stated that the account alleged at SOR ¶ 1.c. was charged off as a bad debt in November 2009. She also stated that she had no contact with the creditor. (Item 8.)

In 2009, Applicant contacted a debt consolidation company. The company opened an account for her and provided her with documents. Applicant paid the company for one month of its services. Then, she concluded that her monthly payment was allocated to the company's service fees and not to the payment of her debts. She stopped paying the company. The record does not reflect that Applicant has had any organized or consistent financial credit counseling. (Item 8.)

Applicant told the investigator that financial advisors at two banks she patronized had advised her in over-the-counter contacts not to pay her three delinquent accounts. Applicant said she was advised to let the accounts go into charged-off status because she was young and could rebuild her credit rating at a later time. In February 2011, Applicant responded to DOHA interrogatories and discussed the three delinquent debts. In response to DOHA inquiries asking what she had done to resolve each of the three debts, Applicant responded three times: "From my understanding, this debt was charged off." She also reported that she had been approved for a new credit card with a \$300 limit, was using the card to make purchases, and was making regular payments on her accrued credit card debt. (Item 7 at 2-3; Item 8.)

Also in February 2011, in response to DOHA interrogatories, Applicant provided a personal financial statement. She reported a net monthly income of \$1,750. Her fixed monthly expenses totaled \$1,662 in the following categories: food: \$200; clothing: \$150; utilities: \$400; car expenses: \$612; and miscellaneous: \$300.² Applicant also reported that she made a monthly payment of \$100 on her new credit card debt. Applicant's financial statement reflected that she spent approximately \$12 more each month than she earned. (Item 7 at 4.)

In her answer to the SOR, Applicant stated that the three delinquent debts alleged on the SOR had been paid. In her response to the FORM, Applicant provided

² Applicant did not report a monthly expense for rent. She did not report any savings or other assets. (Item 7 at 4.)

documentation showing that on April 6, 2011, payment of \$3,388.55 was authorized from an account for the payment of the creditor identified at SOR ¶ 1.a.³

Applicant provided documentation establishing that the creditor identified at SOR ¶ 1.b. agreed to settle the alleged debt for \$3,423.66. She also provided a document, addressed to Applicant from the creditor, dated April 25, 2011, acknowledging receipt of a check for \$3,423.66. Additionally, she provided a document reporting that in May 2011, the account showed a zero balance. (Item A at 6-8.)

Applicant provided a July 27, 2011 offer from the creditor identified at SOR ¶ 1.c. to settle the \$3,359 debt for \$1,750. Applicant also provided a checking account record showing that on July 29, 2011, a check had been authorized to pay \$1,750 to the creditor identified in SOR ¶ 1.c.⁴ By letter dated August 1, 2011, the creditor informed Applicant that it had received her payment and considered the debt satisfied in full. (Item A at 9-11.)

In her answer to the SOR and in her response to the FORM, Applicant stated:

The security clearance will give me the opportunity to grow and expand within my company and make a higher salary. I will be able to take on more responsibilities and be an even greater asset to my team. I respectfully request that you please reconsider my eligibility in light of this new information.

(Item 3; Item A.)

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 adjudicative guidelines (AG). In addition to brief

³ Applicant’s name is not on the document provided, and the owner of account is not identified. (Item A at 4.)

⁴ Applicant’s name is not on the document provided, and the owner of the account is not identified. (Item A at 9.)

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. Additionally, security concerns are raised under AG 19(h), which reads: "unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income." Applicant accumulated substantial delinquent debt, and the record reflects that she did not satisfy the debts for several years. Her financial statement revealed that she was financially overextended and had neither savings nor assets. Despite this, Applicant paid approximately \$8,500 on her delinquent debts between April and July 2011. This evidence is sufficient to raise security concerns under 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)); 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)); or that “the affluence resulted from a legal source of income” (AG ¶ 20(f)).

Applicant’s payments of her three delinquent debts are recent. Two of the debts were satisfied in April 2011 and the third was satisfied at the end of July 2011. The three debts were settled for approximately \$8,500. While Applicant deserves some credit for settling her debts, however belatedly, her debt payments also raise questions. Applicant’s personal financial statement showed that she is financially overextended and spends more money than she earns each month. She reported no savings and no assets. It appears that she did not use her own financial resources to satisfy the three delinquent debts, and nothing in the record explains how Applicant could resolve her delinquent debts if she herself lacked the financial resources to do so. This raises a concern about Applicant’s good faith in paying the delinquent debts alleged on the SOR. DOHA’s Appeal Board has explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’

(ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001))).

Applicant’s financial statement indicated that she had no savings or resources of her own to pay or settle her debts. It is not clear whether she incurred additional debt or accepted gifts to satisfy the delinquencies alleged on the SOR. This raises concerns about her judgment, adherence to duty or obligation, and good faith in resolving her just debts. The record does not reflect a consistent pattern of debt resolution. Insufficient time has passed to conclude that Applicant has established a track record of responsible payment and can avoid the recurrence of financial delinquency in the future.

I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(e), and 20(f) do not apply in mitigation to the facts of Applicant’s case. Additionally, I conclude that AG ¶ 20(d) applies only in part to mitigate the facts of 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):

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