



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



In the matter of:)	
)	
)	ISCR Case No. 10-10625
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

October 19, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 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 answered the SOR on June 24, 2011, and requested a hearing before an administrative judge. The case was assigned to me on July 19, 2011. DOHA issued a notice of hearing on August 2, 2011, and the hearing was convened as scheduled on

August 23, 2011. The Government offered exhibits (GE) 1 through 4, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through C at the hearing. The exhibits were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant made two submissions. On August 25, 2011, she submitted AE D through R that were admitted without objection. On September 23, 2011, she submitted AE S through W that were also admitted without objection. Department Counsel's post-hearing memoranda were marked HE II and III. DOHA received the hearing transcript (Tr.) on September 8, 2011.

Procedural Ruling

Department Counsel moved to amend the SOR to change the date stated in ¶1.p from May 11, 2011, to September 9, 2010. Applicant had no objection to this amendment. The motion was granted. Additionally, Department Counsel stated that because of an oversight, the SOR contained no ¶ 1.j. That information was noted.¹

Findings of Fact

Applicant admitted all the factual allegations in the SOR and those admissions are incorporated as findings of fact. After a review of the pleadings, testimony and admitted exhibits, I make the following findings of fact. Applicant is a 54-year-old employee of a defense contractor. She is single. She holds a bachelor's degree. She has worked for defense contractors in the past and has previously held a security clearance. She began working for her current defense contractor employer in August 2010, but very soon thereafter, in October 2010, was placed on disability because she suffered a shoulder injury resulting from a horse riding accident. She has been unable to work since the accident.²

The SOR alleges 15 delinquent debts totaling approximately \$78,000. The debts were listed on credit reports obtained on September 9, 2010, and May 11, 2011.³

As a result of Applicant's accident in August 2010, she initially was placed on short-term disability that later became long-term disability. She receives approximately \$3,500 per month through her disability payments. This amount is about 60% of her normal earnings. She will continue to receive this amount until she either returns to work or until October 2012.⁴

Applicant owns a ranch and in January 2011 she negotiated an oil and gas lease with a company for prospective oil and gas development on her property. Under the

¹ Tr. at 13-14.

² Tr. at 30-32; GE 1.

³ GE 2, 4.

⁴ Tr. at 53-54; GE 4.

terms of the lease, she was paid, after taxes, approximately \$67,000 by the company. She made a conscious decision not to use these proceeds to pay her SOR-related debts because she was unsure how long her disability status would continue. She originally intended to use the oil and gas proceeds to pay some of her debts, but when she required a second surgery on her shoulder, she decided to hold on to the money until her medical condition became clearer. Additionally, she is not certain whether her position will be available once she returns to work from disability.⁵

Since 2004, Applicant has experienced periods of sporadic unemployment. She was unemployed from February to July 2006 and from October 2006 to January 2007. She worked for a private sector company for the next two and one-half years. She was again unemployed from July 2009 to August 2010 when she was hired for her current position. During these periods of unemployment, she used funds from her 401(K) retirement accounts (thereby incurring an early withdrawal penalty from the IRS) and credit cards to support herself.⁶

The debts alleged in SOR ¶¶ 1.a through 1.h are delinquent medical debts.⁷ Applicant provided receipts showing payment of SOR debts ¶¶ 1.b, 1.f, and 1.g. She also provided documentation showing she offered settlement payments for the following debts: ¶ 1.a (\$50 offered on debt of \$67 on July 15, 2011); ¶ 1.c (\$32 payment made on debt of \$295 on September 16, 2011); ¶ 1.d (\$400 offered on debt of \$497 on August 9, 2011); ¶ 1.e (\$90 offered on debt of \$106 on September 19, 2011); ¶ 1.i (\$4,500 offered on debt of \$9,118 on August 8, 2011); ¶ 1.k (\$3,500 offered on debt of \$7,018 on August 15, 2011); ¶ 1.l (\$2,000 offered on debt of \$2,821 on August 8, 2011); ¶ 1.m (\$5,800 offered on debt of \$11,950 on August 16, 2011); ¶ 1.n (\$2,500 offered on debt of \$32,000 on August 9, 2011, but no settlement letter was included by Applicant); ¶ 1.o (\$7,000 offered, in two \$3,500 installments, on debt of \$13,754 on July 29, 2011); and, ¶ 1.p (\$90 offered on debt of \$119 on September 19, 2011). Other than the debt listed at SOR ¶ 1.c, where one installment payment was accepted by the creditor, there is no evidence in the record showing acceptance of the settlement offers by the respective creditors.⁸

Applicant submitted a character letter from a former colleague who worked with her in both the public and private sector. He describes Applicant as a professional who is reliable, trustworthy, and someone who would never compromise national security.⁹

Applicant sought financial counseling through a nationally-known financial planner. In August 2011, she took a course offered on-line by this planner that helps

⁵ Tr. at 44-45.

⁶ Tr. at 52-56; GE 3.

⁷ SOR ¶ 1.e alleges the same debt as SOR ¶ 1.h. Only SOR ¶ 1.e will be considered in this decision. There is no SOR ¶ 1.j.

⁸ AE D, F-W.

⁹ AE E.

people with their debt situation. The course consisted of 60 hours of on-line classroom time and included financial problem solving. She learned about sending settlement letters to all of her creditors from this course.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be 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, administrative judges apply the 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

¹⁰ Tr. at 39-40, 69-70; AE A.

applicant concerned.” See also Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts including medical debts and credit card debts, and was unable or unwilling to satisfy her obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

Except for a few small debts that have been paid, Applicant still owes on the majority of her debts. They are not infrequent and there is no evidence to support the assertion that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced periods of unemployment and suffered an accident that placed her on disability income that was 40% less than her normal salary. These are conditions beyond her control. However, in order for this mitigating condition to fully apply, the Applicant must also act responsibly under the circumstances. Here, Applicant's actions do not show responsible behavior. During periods of unemployment, she chose to use credit cards to pay her bills. Additionally, rather than use the \$68,000 from her oil and gas lease proceeds to pay off some of her debts, she chose to save that money for other purposes. This was a choice she made that, while understandable, was not responsible toward paying her debts. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling through an on-line course and used that information to send out settlement offer letters. All the letters were sent by Applicant in July, August, and September 2011, and only one creditor accepted the terms for settlement. Although three debts are paid, and she has made one installment payment on another debt, the remaining debts remain unsettled and unresolved. Therefore, her finances are not being resolved and are not under control. Her preliminary attempts to reach settlements with her creditors at this late date are insufficient to support a finding that she has made a good-faith effort to pay or otherwise resolve her remaining debts. AG ¶¶ 20(c) and 20(d) are only applicable to the debts listed at SOR ¶¶ 1.b, 1.c, 1.f and 1.g.

At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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 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 relevant 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.

I considered the character letter of support for Applicant. I also considered her periods of unemployment and the accident that caused her to be placed on disability. I also found Applicant to be honest and candid about her finances. However, with resources available to her, she has done very little to resolve her debts. She only recently engaged her creditors in settlement negotiations. Her past financial track record reflects a troublesome financial history that causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b - 1.c:	For Applicant
Subparagraphs 1.d - 1.e:	Against Applicant
Subparagraphs 1.f - 1.g:	For Applicant
Subparagraphs 1.h - 1.i:	Against Applicant
Subparagraphs 1.k - 1.p:	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.

Robert E. Coacher
Administrative Judge