



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



In the matter of:)
)
-----) ISCR Case No. 10-10690
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: Ted Pitts, Esquire

February 2, 2012

Decision

HOWE, Philip S., Administrative Judge:

On May 19, 2010, Applicant submitted her Security Clearance Application (SF 86). On April 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on April 25, 2011. She answered the SOR in writing on May 24, 2011, and requested a hearing before an administrative judge. DOHA received the request on May 27, 2011. Department Counsel was prepared to proceed on August 14, 2011. I received the case assignment on October 24, 2011, after it was transferred from another administrative judge to whom it was

originally assigned on August 11, 2011. I added the case to several others that I was scheduled to hear in one state.

DOHA issued a Notice of Hearing on October 27, 2011, and I convened the hearing as scheduled on November 15, 2011. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through S, without objection. DOHA received the second copy of the transcript of the hearing (Tr.) on January 12, 2012, after the first copy was misplaced. I granted Applicant's request to keep the record open until December 1, 2011, to submit additional matters. On that date, she submitted Exhibits T through CC, without objection. Duplicate copies of certain exhibits I grouped into Exhibit DD. The record closed on December 1, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, 1.e, and 1.k of the SOR, with explanations. She denied the factual allegations in ¶¶ 1.b, 1.c, 1.f to 1.j of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 53 years old, divorced in 1999, and has a 23-year-old daughter from her marriage. Her former husband died in 2006. He handled all the finances in the family. Applicant admits she was ignorant of money matters and mismanaged her income after the divorce as she tried to establish a home for herself and her young daughter. The divorce was a "nasty" situation, according to Applicant. Now she works for a defense contractor as a technical editor and speech writer. Applicant started this job in April 2010. She was terminated in 2009 from a newspaper where she worked 27 years. (Tr. 19, 60, 65, 74, 78; Exhibits 1, N, O)

The SOR lists 11 delinquent debts totaling \$31,911. Nine debts are resolved. Two debts are unknown to Applicant because her contact with the creditors does not show on their records that she owes them any money (Para. 1.f and 1j). These debts are unresolved. (Tr. 19-50; Exhibits 2-5, A to CC)

The first debt is owed to a collector for a cable television service (Para. 1.a). The debt is \$567. Applicant paid that amount on September 19, 2011. The debt is resolved. (Tr. 19, 20; Exhibits 2-5, A, S, T, Z)

The second debt is a tax lien owed to her home state in the amount of \$21 dating from 1996. Applicant does not recognize this debt (Para.1.b). She offered her 2010 state tax return with a refund of \$282 to show the \$21 was paid. Applicant contends her refund would not have been issued if she continued to owe the \$21. The debt is resolved. (Tr. 20, 24, 26; Exhibits 2-5, B, I, S, T, U, AA)

The third debt is a \$750 state tax lien dating from 1994 (Para 1.c). Applicant contends that this debt was also paid from her tax refunds over the past several years and that it is resolved. She uses her state tax return and the refund received to support her contention. This debt originated during her marriage. The debt is resolved with the copy of the tax lien release. (Tr. 24-26, 70; Exhibits 2-5, B, I, S, T, W)

The fourth debt is a tax lien for \$24,632 owed to the Internal Revenue Service (IRS) (Para. 1.d). Applicant has an installment payment agreement with the IRS starting in December 2011 to pay \$750 monthly to resolve the debt. The amount to be paid is \$12,000. This debt is being resolved. (Tr. 20, 21; Exhibits 2-5, C, S, T, V, BB)

The fifth debt is a judgment owed to a former landlord of Applicant (Para. 1.e). The amount is \$2,375. Applicant paid the creditor \$1,500 to settle the debt on August 31, 2011. Applicant paid an additional \$300 requested by the creditor on September 15, 2011. The creditor signed the letter agreement accepting the settlement on September 29, 2011. This debt is resolved. (Tr. 21; Exhibits 2-5, D, S, T, Y)

Applicant owed a collector \$72 for the sixth debt in the SOR (Para. 1.f). She does not remember or recognize the debt. It is not resolved. Applicant has not been able to find out anything about the debt from the creditor. (Tr. 21, 70; Exhibits 2-5, T)

The seventh debt is owed to a collector on a cell telephone account in the amount of \$94 (Para. 1.g). The debt was paid in a settlement for \$47.04 on September 19, 2011. This debt is resolved. (Tr. 20, 21; Exhibits 2-5, E, S, T)

The eighth debt is owed to a collector in the amount of \$773 for a medical debt (Para. 1.h). Applicant recognizes the debt as part of the cost of her daughter's wisdom teeth extraction. Applicant paid \$600 to resolve this account. She paid it on September 19, 2011. (Tr. 46; Exhibits 2-5, G, S)

The ninth debt is owed to a collector on behalf of a bank in the amount of \$757 (Para. 1.i). The account is closed and the client of the collector was told of this action. Applicant obtained the letter dated September 22, 2011, from the collector informing her of this status. The letter states a zero balance exists on its records for this debt. The debt is resolved. The debt dates from 2005. (Tr. 46-48; Exhibits 2-5, G, S)

The tenth debt shows Applicant owing \$191 to a creditor for a medical service (Para. 1.j). Applicant's Answer stated she did not know anything about this account. The collector for this account informed Applicant it does not have this collection account on its records. It is unclear if this debt is valid, but there is no written proof it was resolved. She submitted a copy of an on-line dispute statement from one credit reporting agency showing no negative accounts on that company's files for Applicant. She contends this dispute document shows this debt also is resolved. (Tr. 49; Exhibits 2-5, S, X; Answer)

The eleventh and final debt is a utility bill owed to the local power company in the amount of \$1,679 (Subparagraph 1.k). The debt was settled for \$839. Applicant mailed

a check to the collector on September 22, 2011. The collector stated he never received the check and Applicant repaid the debt using her credit card on October 5, 2011. Applicant's credit card account report shows the debt was paid. The collection agency also submitted a statement showing the debt is paid in full. This debt is resolved. (Tr. 50-52; Exhibits 2-5, H, S, CC)

Applicant submitted a monthly financial plan, two award nomination forms from her employer showing financial incentives given her for her quality work in October 2011, a congratulatory letter from the commander of the government agency to which she is assigned by her employer, two other complimentary email messages regarding her work product, her 2010 income tax return, and her current pay stubs from her employer. Applicant has not had any financial counseling. All of her income tax forms are filed and her tax payments are current. Applicant does not use credit cards at the present time and does not have a debit card. She pays cash for any purchases. (Tr. 76, 86; Exhibits I to R)

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 useful 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 (AG ¶ 2(a)). 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. 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, an "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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$31,911 in delinquent debt from 2004 to the present time that was unpaid. Applicant has 11 delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Four conditions may be applicable:

- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant was terminated from her long-time employment in 2009. She was divorced in 1997. These two events caused most of her financial difficulties. Applicant did not comprehend her continuing obligations to pay her debts, including her income taxes, in a regular manner. Now she does understand what she needs to do to resolve her debts and she has done it. Applicant acted as well as she could under the stressful circumstances of losing a job she had for over 25 years, being divorced after 11 years of marriage, and having to fend for herself and find new employment. She worked toward stabilizing her life and resolving her delinquent debts. AG ¶ 20 (b) applies.

Applicant paid several debts in an orderly manner in 2011. She submitted her financial plan with the monthly budget she uses. There are clear indications from the evidence she presented that the financial problems are under control and being resolved. AG ¶ 20 (c) applies.

Applicant paid nine debts and filed her tax returns. She only has \$263 worth of debts unresolved, though she did submit a statement from one credit reporting agency that she has no negative accounts on their records. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay her delinquent debts.

Finally, Applicant disputed two debts she could not identify. The credit reporting agency she contacted sent her an email that there were no negative accounts on her record. AG ¶ 20 (d) applies for her efforts to dispute those two debts.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant was divorced in 1999 and was ignorant of how to manage her income. Then she lost her job in 2009 and was unemployed until she found her current job in April 2010. She failed to file income tax returns for several years because of her lack of knowledge about such matters. Now she has corrected all those failings, paid her debts as listed in the SOR, and has only \$263 of possibly unresolved debt. One credit reporting agency found she had no negative accounts on her credit record. Applicant no longer engages in spending practices that would create the same situation. There is no potential for pressure, coercion, exploitation, or duress by any one against Applicant. Her work product is considered high quality by her supervisors and other superiors at her work site. Applicant has substantially improved her financial behavior.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations. I conclude the "whole-person" concept for Applicant.

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:	FOR APPLICANT
Subparagraph 1.a to 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge