



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



In the matter of:)
)
) ISCR Case No. 10-10994
)
Applicant for Security Clearance)

Appearances

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

08/30/2012

Decision

NOEL, Nichole L., Administrative Judge:

Although Applicant has resolved two of the delinquent accounts alleged in the
SOR, the remaining eight accounts, totaling over \$17,000, remain unresolved. She did
not meet her ultimate burden of persuasion to obtain a favorable clearance decision
because she failed to substantiate her claim of ongoing payments toward the
unresolved delinquent accounts. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on March 8, 2012,
the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

(SOR) detailing the security concerns under the financial considerations guideline. DOHA recommended the case be submitted to an administrative judge for a determination to revoke or deny Applicant's access to classified information.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on May 3, 2012. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 9, 2012, and chose not to submit a response. Accordingly, the documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 11. The case was assigned to me on July 19, 2012.

Findings of Fact

Applicant, 42, has worked as a federal contractor since May 2010. This is her first application for a security clearance.²

The SOR alleges that Applicant owes ten delinquent accounts, totaling approximately \$21,353. Her financial problems began in the early 2000s. Between 2000 and 2002, Applicant opened seven consumer credit accounts, which she used for personal and business expenses. After the janitorial business she owned and operated between 2005 and 2008 failed, she was unemployed for a total of 11 months between January 2009 and May 2010. As a result, she became unable to repay her outstanding debts and the accounts became delinquent.³

Applicant admits that she is responsible for the debts alleged in ¶¶ 1.a. through 1.e., as well as ¶¶ 1.i. and 1.j. She denies ¶¶ 1.f. through 1.h., without explanation. Applicant has resolved two of the debts alleged in the SOR: ¶¶ 1.d. and 1.e. She claims to have resolved the debt alleged in ¶ 1.i. by the capture of her state income tax refund. Applicant's August 2010 credit report characterizes the debt alleged in ¶ 1.i. as a miscellaneous government debt incurred to Applicant's city of residence in March 2009. In response to DOHA interrogatories, Applicant provided documentation suggesting that the debt was related to her outstanding state tax liability for the years 2008 and 2009, which has since been resolved by refund capture. However, the documents do not appear to be related to ¶ 1.i. Applicant did not provide any explanation connecting the tax documents to the allegation.⁴

Applicant also claims to have made payments towards the debts alleged in ¶¶ 1.a. through 1.c. and 1.j. In response to DOHA interrogatories, Applicant provided bank

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² GE 4.

³ GE 8.

⁴ GE 3, 5, 7.

statements for periods ending in September 2010 and May 2011. However, she did not indicate the purpose of these documents. Aside from two payments on the debt alleged in ¶ 1.a. in September 2010 totaling \$778, there is no indication that she made any payments on SOR debts alleged in ¶¶ 1.b., 1.c., or 1.j. before the issuance of the SOR. She has also failed to provide documentation of payments on these debts since then.⁵

Applicant has not obtained financial counseling or consulted a debt consolidation service. With \$571 of disposable income each month, Applicant states that she is able to meet her current living expenses and is living day to day.⁶

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, which 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.

Analysis

Guideline F, Financial Considerations

The security concern 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

⁵ GE 3.

⁶ GE 7-8.

overextended is at risk of having to engage in illegal acts to generate funds.

Two of the disqualifying conditions under ¶ AG 19 apply:

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

Applicant became unable to pay her outstanding debt after her business failed in 2008 and she experienced 11 months of unemployment before she started her current job. Although she denies responsibility for the debts alleged in ¶¶ 1.f. through 1.h, the debts are substantiated by her credit reports.

Of the mitigating conditions available under AG ¶ 20, two are partially applicable to this case.

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

Applicant's financial problems were caused by a combination of events beyond her control and her excessive use of consumer credit. However, she failed to provide evidence that she acted responsibly under the circumstances. While Applicant has resolved two of the accounts alleged in the SOR, ¶¶ 1.d. and 1.e., the other eight debts remain unresolved. In 2010, Applicant made two payments toward the debt alleged in ¶ 1.a., however this is not sufficient to establish a good-faith effort to resolve her delinquent debt. Applicant's claim that she has made payments on four of the alleged debts, ¶¶ 1.b., 1.c., 1.i., and 1.j., is not supported by the record. In the absence of an explanation by Applicant, neither the descriptions of transactions in the bank statements nor the tax records she submitted match any of the accounts alleged in the SOR. As such, I am unable to determine whether she has made any payments on these accounts. With respect to the debts she denies, ¶¶ 1.f. through 1.h., Applicant failed to provide any explanation refuting the legitimacy of the debts or evidence that she challenged the debts with the creditors or the credit reporting agencies.

In addition, Applicant has not received any financial counseling and there is no indication that her finances are under control. Applicant's ability to maintain her current monthly obligations does not diminish the record evidence that she is unable to satisfy

her delinquent debt.⁷ Consequently, Applicant has failed to mitigate the Guideline F concerns raised in this case.

In reaching this conclusion, I gave due consideration to the whole-person concept. Applicant's financial problems were partially caused by events beyond her control. However, she did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. As such, her request for access to classified information is denied.

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 |
| Subparagraphs 1.d. – 1.e.: | For Applicant |
| Subparagraphs 1.f. – 1.j.: | Against Applicant |

Conclusion

In light of all of the circumstances, 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.

Nichole L. Noel
Administrative Judge

⁷ See ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999).