



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



In the matter of:)
)
) ISCR Case No. 11-00247
)
Applicant for Security Clearance)

Appearances

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

September 30, 2011

Decision

DUFFY, James F., 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 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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.

On May 11, 2011, Applicant answered the SOR and requested a hearing. The case was assigned to me on August 3, 2011. DOHA issued a notice of hearing on August 10, 2011, and the hearing was convened as scheduled on August 30, 2011.

Department Counsel offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's list of exhibits was marked as hearing exhibit (HE) 1. Applicant testified and offered exhibits (AE) A through E, which were admitted into evidence without objection. The record was left open until September 20, 2011, for Applicant to submit additional matters. Applicant timely submitted AE F that was admitted into evidence without objection. Department Counsel's memorandum forwarding the post-hearing exhibit was marked as HE 2. DOHA received the hearing transcript (Tr.) on September 9, 2011.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. She has worked for her current employer for about 14 months. She was home schooled and has a General Educational Development (GED) certificate. She recently started attending college. She is divorced and has two children, ages 6 and 13. This is the first time that she has applied for a security clearance.¹

The SOR alleges eleven delinquent debts totaling about \$21,201. These debts were listed on credit reports obtained on October 13, 2010, and January 22, 2011. In her answer, Applicant admitted each of the allegations (SOR ¶¶ 1.a through 1.k), but denied the security concern paragraph (SOR ¶ 1). Her admissions are incorporated herein as findings of fact.²

Applicant attributes her financial difficulties to a failed marriage and medical problems. She indicated that, before her marriage, she had no financial problems. She married in February 2009. Her husband was employed when they married, but soon thereafter lost his job. She stated that he liked to spend money and obtained credit cards in her name without her knowledge. She indicated her marriage started "falling apart" in November 2009. They separated in December 2009 and divorced in June 2010. During the divorce proceeding, she attempted to hold him responsible for the credit cards that he opened in her name. A special master in that proceeding, however, advised her that she could not prove he opened those accounts. Her divorce decree indicates that each party is responsible for debts in their names. At the hearing, she indicated that some of the delinquent debts were hers or were incurred with her knowledge. Although she did not recall specifics about certain debts, she did not identify any specific debt as being a credit card that her ex-husband opened in her name without her knowledge.³

From January 2004 to October 2008, Applicant was employed as an office administrator at a medical rehabilitation center. In October 2008, she contracted Rocky Mountain spotted fever. Due to that illness, she was unable to work and was

¹ Tr. at 3-5, 27-31; GE 1.

² Applicant's Answer to the SOR; GE 3, 4; AE D.

³ Tr. at 39-49, 65-69, 73-80; GE 1, 2; AE C.

unemployed from October 2008 to January 2010. This illness affects the central nervous system. She indicated that she had memory loss, tremors, and extreme fatigue. She could not care for her children and moved in with her parents so that they could care for her and her children. Unable to walk more than a couple steps at a time, she used a wheelchair to move around. She had no income during her illness, but received health benefits from October 2008 to March 2009. At that time, she was also receiving financial support from her parents and her church. She applied for disability benefits, but they were denied. She was told her illness was not a debilitating disease. She was sent to see a psychiatrist, but never appealed the denial decision. She was medically cleared to begin working again in January 2010 and started working the following month.⁴

Applicant provided no proof of payments or settlement arrangements for the delinquent debts. She indicated that she contacted the credit card companies to see if they would settle the debts or lower the interest rates. However, she found that the credit card companies were unwilling to work with her. She decided that the only way to move forward was to file bankruptcy. She acknowledged that issuance of the SOR got her “in gear” to file bankruptcy.⁵

On June 14, 2011, Applicant filed a Chapter 7 bankruptcy petition without the assistance of an attorney. As a prerequisite to that filing, she received financial counseling. The petition reflects that her assets totaled \$123,950 and her liabilities totaled \$47,073. She initially stated that all of the debts were included in the bankruptcy. However, two debts (SOR ¶ 1.b and 1.c, medical debts for \$442 and \$291, respectively) could not be found in the petition. She later testified that she may have paid those two medical debts, but provided no proof of payment. At the creditors meeting, the bankruptcy trustee advised her that she did not properly fill out the sections in the petition concerning her home. She eventually decided to hire an attorney to assist her with completing the necessary bankruptcy documents. Her mother loaned her the money to hire the attorney. At the time of the hearing, the bankruptcy was still pending, but Applicant indicated it would soon be completed.⁶

Applicant stated she is meeting her current expenses. She also stated that she incurred no new delinquent debts since returning to work. However, a review of her latest credit reports reflected that the debts in SOR ¶¶ 1.b and 1.c were placed for collection in October 2010, which was after she returned to work. She currently has no credit cards and operates on a cash-only basis. The last time she opened a credit card was before she was married. She testified that she has paid some medical and hospital

⁴ Tr. at 31-37, 65-66; GE 1, 2.

⁵ Tr. at 49-54.

⁶ Tr. at 49-54, 70-72, 80-84, 92; GE 2; AE E. The debt in SOR ¶1.d, a credit card debt, is listed in the bankruptcy petition as a debt for wedding attire. See GE 2 at I-5. The bankruptcy petition lists a number of hospital bills that could possibly be the debts in SOR ¶¶ 1.b and 1.c. Applicant did not provide a bankruptcy discharge certificate in her post-hearing submission.

bills. Within the five months preceding the hearing, she stated that she paid \$400 to her family doctor and her family doctor bills are now current.⁷

Applicant's bankruptcy petition reflects that her average monthly income was \$2,110 and her average monthly expenses were \$2,037, leaving her a net monthly remainder of less than \$100. Beside her salary, she also receives \$50 per week in child support for her older child. She has not been able to locate the father of her younger child to obtain child support. Since October 2007, she has owned a home. She estimated that her home was worth \$118,000, with a mortgage balance of \$42,000. Throughout her financial difficulties, she has been able to pay the \$375 monthly mortgage payments. At the time of the hearing, her checking account had a balance of about \$1,000 and her savings account had a zero balance.⁸

Applicant consulted with a family financial advisor in May or June 2011. The financial advisor counseled her about budgeting and rebuilding her credit. Her supervisor indicated that she has a good work ethic and is a reliable employee. He considers her to be trustworthy individual who will protect controlled documents.⁹

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.

⁷ Tr. at 52-54, 56-69, 85; GE 1, 2.

⁸ Tr. at 27-31, 56-69, 85; GE 1, 2; AE E.

⁹ Tr. at 86-88; GE 1; AE A.

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 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 and was unable or unwilling to satisfy them for a number of years. This 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;

(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's financial problems are not minor, and they are ongoing and unresolved. Due to health problems, she was unemployed from October 2008 to January 2010. During her illness, she had no income and relied upon her parents and her church for financial assistance. In 2009, she also experienced a failed marriage. These events were conditions beyond her control that caused her financial problems. To be fully applicable, however, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. In January 2010, she was medically cleared to begin working again and, soon thereafter, found employment. She provided no proof that she has made any payments on the delinquent debts since returning to work; however, her salary only allows her to meet her current living expenses. Since starting her current job, she has incurred additional delinquent debts. She acknowledged that the issuance of the SOR prompted her to file Chapter 7 bankruptcy, which is still pending. Based on these circumstances, I cannot conclude that she has acted in a financially responsible manner since returning to work, that her delinquent debts are unlikely to recur, or that they do not cast doubt on her current reliability, trustworthiness, or good judgment. I find that AG ¶ 20(b) is partially applicable, but ¶ 20(a) is not applicable.

Applicant received financial counseling during the bankruptcy process and also consulted with a family financial advisor. Her bankruptcy petition was only recently filed. At this point, it is unknown whether she will obtain a bankruptcy discharge. Given these circumstances, it is also too soon to tell if she will resolve her outstanding delinquent

debts in a reasonable time and then continue to be a financially responsible person. Based on the record evidence, the likelihood of additional or continuing financial problems cannot be ruled out. I find AG ¶ 20(c) is partially applicable and ¶ 20(d) is not applicable. Since she admitted each of the delinquent debts, AG ¶ 20(e) is not applicable.

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.

Applicant found herself in a difficult situation when she contracted an illness that prevented her from working for over a year. She also experienced a failed marriage during that time period. Despite such mitigation, her financial problems remain a security concern. At this point, it is unknown whether her bankruptcy proceeding will resolve her financial problems. Additionally, she has incurred new delinquent debts since returning to work. In the absence of an established track record of meeting her financial obligations, insufficient evidence exists to conclude that her financial problems are behind her.

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 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.k: 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.

James F. Duffy
Administrative Judge