



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



In the matter of:)
)
) ISCR Case No. 11-00319
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

11/07/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant accumulated significant delinquent debt over the last 10 years. Some of her financial problems may have been caused or aggravated by circumstances beyond her control, and she has made some efforts to resolve her financial problems. Notwithstanding, the evidence fails to establish that Applicant showed financial responsibility in the acquisition and resolution of her delinquent debts. She is not in control of her financial situation. It is too soon to determine whether Applicant has a viable plan to resolve her delinquent debt. The record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 21, 2010. On April 26, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F

(Financial Considerations).¹ Applicant answered the SOR on June 2, 2012, and requested a hearing before an administrative judge.

The case was assigned to me on August 1, 2012. DOHA issued a notice of hearing on August 9, 2012, scheduling a hearing for September 7, 2012. At the hearing, the Government offered exhibits (GE) 1 through 6. Applicant testified, and submitted exhibits (AE) 1 through 8. All exhibits were received without objection. DOHA received the hearing transcript (Tr.) on September 11, 2012.

Findings of Fact

Applicant admitted 12 of the 13 SOR factual allegations and claimed mitigating circumstances. She denied SOR ¶ 1.e, and submitted documentary evidence of payment. (AE 6) Her admissions are incorporated as findings of fact. After a thorough review of all the evidence, including her demeanor and testimony, I make the following additional findings of fact.

Applicant is a 30-year-old help desk specialist employed with a defense contractor. She was awarded a bachelor's degree in Spanish and political science in 2004. She was awarded her master's degree in technology and project management in May 2011. She has never been married, and she has no children.

Applicant employment history shows that she worked part-time from October 1999 until March 2009, and from July 2009 until August 2009. She also worked for a government agency as a seasonal hire between 2002 and 2004. Applicant's part-time employment sometimes overlapped with her full-time work. She worked full-time for a government agency from February 2005 until January 2006. She then worked full-time for federal contractors from April 2006 until August 2006, and from December 2007 until present. She started working for her current employer in January 2011. Because of her work with a government agency and different government contractors, she has possessed a security clearance at the secret or top secret levels from 2003 to present. According to her testimony, since 2006, she has been unemployed only for a period of three months in 2009.

In her January 2010 SCA, Applicant disclosed she had property repossessed, debts turned over to collection agencies, delinquent credit card accounts, and debts that were over 180 days delinquent. Applicant's background investigation addressed her financial situation and revealed the 13 delinquent debts alleged in the SOR, totaling over \$29,000.

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

At her hearing, Applicant disclosed having additional delinquent accounts for medical services received owing \$2,445; \$7,000; and other medical debts she did not recall. In her April 2011 financial statement, Applicant stated that she had several credit card accounts and personal loans delinquent owing \$9,000; \$300, \$900; \$600; \$500; and \$420. At her hearing, she testified that these accounts are still delinquent, and she owes about the same amounts indicated in her April 2011 financial statement. Additionally, she has three outstanding pay day loans for \$1,500; \$500; and \$300. Applicant also owes \$150,000 in student loans. The student loans have been in a deferred status; however, she will have to start paying the student loans in October 2012.

Applicant explained that she has been self-sufficient and independent all her life. She was raised by her grandparents, and she left their home in 2000 to attend college. She financed her education using student loans. Applicant has worked either full-time or part-time since 1999, but her income was insufficient to pay for her day-to-day living expenses, medical expenses, and other financial obligations. She resorted to using her credit card accounts, pay day loans, and personal loans to supplement her income. Many of the delinquent accounts alleged in the SOR date back to 2004, and relate to pay day loans, credit cards accounts, and an overdrawn checking account that she was not able to pay. SOR ¶¶ 1.f and 1.g relate to two vehicles Applicant purchased in 2005, that were repossessed in early 2006.

At her hearing, Applicant admitted her past financial irresponsibility, but promised to do better managing her finances. She claimed that she is making progress in addressing her delinquent debts. She made reference to SOR ¶ 1.e that she paid, and to other debts not alleged in the SOR that she paid. Applicant explained that since 2009, she has not been able to find part-time work to generate additional income to pay her debts. AE 1 shows that in July 2012, she applied for part-time work, but she was not hired. She attempted to consolidate her delinquent debts three times between 2008 and 2011, but decided that paying someone else to pay her debts was not a smart decision. (AE 2)

Applicant participated in financial counseling and presented a proposed budget. She intends to resolve her financial problems by filing for bankruptcy protection in the near future. She is in the process of retaining a bankruptcy attorney. She made a \$600 down payment for her legal fees, but still owes \$1,200. She will have to pay the \$1,200 before her attorney files for bankruptcy protection. (AE 5) Applicant testified that she has numerous medical problems that contributed to her financial problems. She had medical insurance, but her insurance is not sufficient to pay her large medical bills. (AE 7, AE 8) Applicant also averred that the passing of her grandfather in 2010 contributed to her financial problems. In January 2011, Applicant moved in with her grandmother to provide her with assistance, and to reduce Applicant's living expenses.

Applicant presented some documentary evidence of contacts with creditors and of payments made on other debts. However, the record shows that Applicant has a history of acquiring new financial obligations without resolving her prior delinquent

financial obligations. Concerning the debts alleged in the SOR, as of her hearing date, all of Applicant's debts remain delinquent, except for SOR ¶ 1.e, which she paid. Applicant expressed remorse for her financial problems. She averred that she has learned her lesson from her past financial mistakes and promised to be financially responsible in the future. She needs her security clearance and her current job to be able to pay her delinquent debts.

Policies

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

Between 2000 and 2012, Applicant accumulated significant delinquent debt, most of which remain delinquent. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant's favorable evidence fails to fully establish the applicability of any mitigating condition. Her financial problems are ongoing, she has extensive delinquent debt, and the evidence fails to show that she acted responsibly in the acquisition of the

debts, or that she acquired the debt under such circumstances that the behavior is unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's periods of unemployment and underemployment, her medical condition, and the death of her grandfather are circumstances beyond her control that could have contributed to her financial problems. Notwithstanding, her favorable evidence is not sufficient to show that she acted responsibly in addressing her financial obligations. Applicant provided some documentary evidence to show contacts with creditors, payments made, and some efforts to resolve her debts. However, her efforts were intermittent, and she continued to acquire additional debt that became delinquent without resolving her prior delinquent debts. AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns.

AG ¶ 20(c) applies because Applicant received financial counseling. However, it does not mitigate the financial considerations concerns. Considering the number of debts and the aggregate total of the debts, I cannot find that there are clear indications that her financial problems are being resolved or under control.

Applicant presented some evidence of efforts to resolve her delinquent debt. Her recent unsuccessful efforts to consolidate her debts and to file for bankruptcy protection in the future are a step in the right direction, but do not establish Applicant's financial responsibility. Questions remain about Applicant's current financial situation and her ability and willingness to make her future bankruptcy payments. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility. AG ¶ 20(d) partially applies, but does not fully mitigate the financial concerns. AG ¶ 20(e) does not apply because there is no documentary evidence to show Applicant disputed any of her debts. The remaining mitigating condition (AG ¶ 20(f)) is not applicable to the facts of this case.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant accumulated significant delinquent debt over the last 10 years. Some of her financial problems may have been caused or aggravated by circumstances beyond her control. Notwithstanding, the record evidence fails to establish that Applicant showed financial responsibility in the acquisition and resolution of her delinquent debts. She is not in control of her financial situation. It is too soon to determine whether Applicant has a viable plan to resolve her delinquent debt. The record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance.

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.d; 1.f-1.m:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge