



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



In the matter of:)
)
) ISCR Case No. 11-00713
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Frederick W. Schutz, Esq.

01/31/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke her eligibility for a security clearance to work in the defense industry. The SOR alleges that Applicant owes approximately \$63,500 in delinquent debt to 15 creditors. Applicant’s delinquent debt resulted from events beyond her control. She is currently participating in a student loan rehabilitation program and has resolved the delinquent accounts with her remaining 14 creditors. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of

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

Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the factual basis for the action under the adjudicative Guideline F, financial considerations.

Applicant answered the SOR and requested a hearing. The hearing proceeded as scheduled on December 6, 2011. Government's Exhibits (GE) 1 through 8 and Applicant's Exhibits (AE) A through P were admitted without objection. I left the record open until January 6, 2012 for Applicant to submit additional documentation regarding her finances. She timely submitted AE Q through W, without objection from Department Counsel.² I received the Transcript (Tr.) on December 13, 2011.

Findings of Fact

Applicant is a 35-year-old, single mother of a 7-year-old daughter. She received a bachelor's degree in business administration in 2007. Applicant financed her education with student loans. She has worked as a government contractor since 1998 and has been with her current employer since 2003. She has held a security clearance since 2001.³

The SOR alleges that Applicant is indebted to 15 creditors for approximately \$63,500. The majority of the delinquent debt falls into three categories: education debt (\$44,391), consumer credit (\$17,067) and medical debt (\$2,042). Applicant started having financial problems in the early 2000s after being injured in a car accident. When she began to accumulate delinquent debt, she enrolled in a debt consolidation program and paid off her debt in three years. Despite being debt free, Applicant continued to live paycheck to paycheck.⁴

In 2006, Applicant began experiencing financial problems again, as a result of undiagnosed medical issues. In absence of a diagnosis, Applicant's insurance company refused to cover the costs associated with any diagnostic testing or pre-diagnosis treatments. In 2008, she was involved in another car accident that was not her fault. Her car was declared a total loss and she incurred medical costs associated with injuries sustained in the accident. Her financial problems were further exacerbated in 2009 when her student loans entered repayment status. In September 2010, Applicant again enrolled in a debt consolidation program for assistance in resolving her mounting delinquent debt. Under the debt consolidation program, Applicant paid \$1,800 toward her delinquent debt. In February 2011, she enrolled in a student loan rehabilitation program. She has successfully completed the program and is now eligible to refinance the loans under more favorable terms.⁵

² The Government's Post-hearing Memorandum is appended to the record as Hearing Exhibit (HE) 1.

³ Tr. 31 – 35.

⁴ Tr. 40, 44-46; Answer to SOR.

⁵ Tr. 38-40, 61-63, 70-71; AE B.

Applicant tried to resolve her financial problems on her own, not realizing the implications the delinquent debt would have on her security clearance. After receiving the SOR, she asked her parents for help. Applicant's parents provided financial counseling and gifted her \$4,000 to help her resolve her delinquent debt. In addition to the gift from her parents, Applicant borrowed against her 401K to resolve some of her outstanding medical debt. In November 2011, she received a \$7,400 settlement from her 2008 car accident. She used the windfall to pay off her remaining delinquent debt.⁶

To date, Applicant continues to make timely payments on her student loans and is currently on the lender's wait list for refinancing. She has paid or settled all of the delinquent debt alleged in the SOR. Applicant does not have any open consumer credit accounts and has not accumulated any new debt. The current balance on her 401K loan is less than \$250. She has received a definitive diagnosis of her medical issues and expects her treatment and medications to be covered by her insurance company going forward.⁷

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.

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 security decision.

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⁷ GE 3; AE Q, S.

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 of 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* EO 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:

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 ¶ 19 provides two Financial Considerations Disqualifying Conditions that are applicable here:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

In 2006, Applicant became overwhelmed by medical bills, car repairs, and student loan expenses that exceeded her income. For the next four years, she accumulated delinquent debt because she could not afford to pay her creditors.

The following mitigating conditions available under AG ¶ 20 apply:

20(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;

20(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

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

Applicant's financial problems are the result of two conditions beyond her control: an undiagnosed medical condition and a car accident. Her finances were stressed even more when her student loans entered repayment status. Applicant acted responsibly by enrolling and participating in a debt repayment program. When she realized she was in over her head, she consulted her parents for financial counseling. In addition to the payments she made under her debt repayment program, Applicant used her available resources to resolve her delinquent debt: the gift from her parents, a 401K loan, and the windfall she received from her 2008 car accident. Applicant's efforts constitute a good-faith effort to resolve her indebtedness. Based on the evidence, I conclude that Applicant has mitigated the Guideline F concerns.

I have no reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person concept. Applicant approached her financial problems well before the concern was raised by this current security clearance investigation. She has demonstrated a positive history of repayment of her debts. While her finances may remain strained by her circumstances, her financial problems are not indicative of poor self-control, lack of judgment, or an unwillingness to pay her debt. She has demonstrated the opposite. Therefore, I conclude that Applicant has mitigated the 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: FOR APPLICANT

Subparagraphs 1.a-1.gg: For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge