



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



In the matter of:)
)
) ISCR Case No. 11-05335
)
Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On June 27, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken 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) implemented on September 1, 2006.

Applicant answered the SOR on July 31, 2012, and requested a hearing on August 17, 2012. The case was assigned to me on October 12, 2012. DOHA issued a notice of hearing on November 7, 2012, and the hearing was convened as scheduled on November 16, 2012. At the hearing, Department Counsel offered Government's

Exhibits (GE) 1 through 4 that were admitted into evidence without objection. Applicant testified and offered documents marked as Appellant's Exhibits (AE) A and B that were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 29, 2012.

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. She has been working for her current employer for about 28 years. She graduated from high school in 1973 and attended college for about a year. She has been married twice. Her first marriage began in January 1975 and ended by divorce in September 1983. She married her current husband in October 1995. She has a daughter who is 39 years old and a stepson who is 35 years old. This is the first time she has sought to obtain a security clearance.²

The SOR alleged that Applicant had ten delinquent debts totaling about \$29,833. Those debts were listed on credit reports obtained on February 16, 2011, March 16, 2012, and April 15, 2012. In her Answer, Applicant admitted each of the delinquent debt allegations. Her admissions are incorporated herein as findings of fact.³

Applicant attributed her financial problems to a period of unemployment from July 2009 to March 2010 and to having to provide support to her parents. In July 2009, she was laid off her job due to an economic downturn. While unemployed, she did not collect unemployment compensation. From March 2010 to October 2010, she worked for another employer. She was rehired by her current employer in October 2010. Her parents had chronic illnesses, and she helped them pay for their medications and household bills. Since she began providing them support, her father has passed away, but she continues to provide about \$500 per month in support to her mother. She also periodically provides support to her daughter.⁴

In December 2006, Applicant filed Chapter 7 bankruptcy. She was informed that she earned too much for Chapter 7 bankruptcy and converted that proceeding to a Chapter 13 bankruptcy. At that time, her assets totaled about \$5,000 and her liabilities totaled about \$20,000. She testified that she could not keep up with the monthly

¹ Tr. at 11-13.

² Tr. at 6, 48-52; GE 1, 2.

³ GE 2; Applicant's Answer to the SOR.

⁴ Tr. at 25-27, 45-58; GE 2.

payments of \$1,300 to the bankruptcy trustee. The bankruptcy was dismissed in January 2008.⁵

In April 2012, Applicant entered into a debt consolidation program. This program will only address debts that are over \$100. Seven of her debts totaling \$20,290 are listed in that program. Under this program, she will pay \$354 per month for 45 months towards those debts. As discussed below, some of the debts alleged in the SOR are listed in the program. Since April 2012, she has made her monthly payments to that program. She has authorized the debt consolidation company to automatically debit her bank account for the monthly payments.⁶

SOR ¶ 1.a – judgment for \$11,798. This debt was for a vehicle loan. The judgment was filed in September 2008. In March 2012, Applicant entered into a repayment agreement with the creditor. This repayment agreement is not part of her debt consolidation program. Under the agreement, she will pay \$75 per month until the debt is fully paid. She provided documents showing that she has made the \$75 payment since April 2012.⁷

SOR ¶ 1.b – judgment for \$1,559. This debt was for a personal loan used to pay medical bills. The judgment was filed in November 2006. During her Office of Personnel Management interview in February 2011, Applicant stated that she began making monthly payment of \$40 towards this debt and had made six of those payments. She did not provide proof of those payments. She did provide a money order that indicated that she made a \$20 payment to the creditor in February 2012. She also sent the creditor a \$15 money order in October 2012.⁸

SOR ¶ 1.c – charged-off account for \$6,784. This debt was a line of credit account. The date of last activity on this account was June 2006. This debt is listed in Applicant's debt consolidation program.⁹

SOR ¶ 1.d – charged-off account for \$7,464. This debt was an unsecured loan. The date of last activity on this account was October 2004. This debt is listed in Applicant's debt consolidation program.¹⁰

⁵ Tr. at 25, 27, 37; GE 1-4.

⁶ Tr. at 20-24, 27-38, 46, 53-55; GE 2; Applicant's Answer to the SOR.

⁷ Tr. at 23-24, 38-40, 52-53; GE 2-4; AE A, B; Applicant's Answer to the SOR.

⁸ Tr. at 37, 39-41; GE 2, 3; AE B. Applicant's Answer to the SOR.

⁹ Tr. at 34, 41; GE 2-4; Applicant's Answer to the SOR.

¹⁰ Tr. at 36, 41-42; GE 2, 3; AE A; Applicant's Answer to the SOR. In Applicant's debt consolidation program, this debt is listed under the name of another creditor, but the amount of the debt listed in the program is identical to the amount listed in SOR ¶ 1.d.

SOR ¶ 1.e – collection account for \$1,329. This debt was a telephone service account that was placed for collection in December 2011. This debt is listed in Applicant’s debt consolidation program.¹¹

SOR ¶ 1.f – collection account for \$408. This debt was a credit card account. The date of last activity on this account was September 2006. In her Answer to the SOR, Applicant indicated that she is making monthly payments to satisfy this debt and provided a copy of a \$10 money order sent to the creditor in July 2012. She also sent the creditor a \$15 money order in October 2012.¹²

SOR ¶ 1.g – collection account for \$128. This debt was a credit card account. The date of last activity on this account was April 2010. In her Answer to the SOR, Applicant indicated that she is making monthly payments to satisfy this debt and provided a copy of a \$10 money order sent to the creditor in July 2012. She also sent the creditor a \$10 money order payment in October 2012.¹³

SOR ¶ 1.h – collection account for \$62. This debt was a medical account. In her Answer to the SOR, Applicant indicated that she is making monthly payments to satisfy this debt and provided a copy of a \$10 money order sent to the creditor in July 2012.¹⁴

SOR ¶ 1.i – collection account for \$79. This is a collection agency account. The original creditor is unknown. In her Answer to the SOR, Applicant indicated that she is making monthly payments to satisfy this debt and provided a copy of a \$10 money order sent to the creditor in July 2012.¹⁵

SOR ¶ 1.j – collection account for \$1,020. This debt was a telephone service account. The date of last activity on this account was January 2011. This debt is listed in Applicant’s debt consolidation program.¹⁶

Applicant’s annual income with overtime is about \$60,000. In March 2012, she submitted a Personal Financial Statement (PFS) that reflected her net monthly remainder was \$2,035. Based on the information provided, however, her calculations on the PFS do not add up and could not be verified.¹⁷

¹¹ Tr. at 32, 42; GE 2, 3; AE A; Applicant’s Answer to the SOR. This debt apparently is listed twice in Applicant’s debt consolidation program.

¹² Tr. at 37, 42-43; GE 2-4; AE B; Applicant’s Answer to the SOR.

¹³ Tr. at 43, 53-54; GE 2-4; AE B; Applicant’s Answer to the SOR.

¹⁴ Tr. at 43-45; GE 2, 4; AE B; Applicant’s Answer to the SOR.

¹⁵ Tr. at 44-45; GE 2; AE B; Applicant’s Answer to the SOR.

¹⁶ Tr. at 35, 45; GE 2, 3; AE A; Applicant’s Answer to the SOR.

¹⁷ Tr. at 26-27 46-52; GE 2.

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.

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.

In 2006, Applicant filed bankruptcy that was dismissed in 2008. She has accumulated ten delinquent debts totaling over \$29,000 that she was unable or unwilling to satisfy for an extended period. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.¹⁸ An applicant is not required, as a matter of law, to establish that he or she has resolved every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first.¹⁹

In this case, Applicant was unemployed from July 2009 to March 2010. She also provided support to her elderly parents who were chronically ill. Her unemployment and her parents' illnesses were conditions beyond her control that contributed to her financial problems. For AG ¶ 20(b) to apply fully, an individual must not only experience one or more conditions beyond his or her control, but also must have acted responsibly under the circumstances. Here, some of the delinquent debt predated her period of unemployment and she presented no evidence that she took action to resolve the debts before her OPM interview other than her Chapter 13 bankruptcy attempt. In April 2012, she entered into a repayment arrangement for one debt totaling \$11,000 (SOR ¶ 1.a) and established a debt consolidation program for four other debts totaling \$16,597 (SOR ¶¶ 1.c, 1.d, 1.e, and 1.j). During the past seven months, she has been making the monthly payments on the repayment arrangement and debt consolidation program. For the remaining five debts totaling \$2,108 (SOR ¶¶ 1.b, 1.f, 1.g, 1.h, and 1.i), she has made some small, sporadic payments. From the evidence presented, it appears that she is focusing on first resolving the larger debts. On the whole, she has taken significant steps to show that she is committed to resolving her debts. She is living within her means and her financial problems are unlikely to recur. AG ¶¶ 20(c) and 20(d) fully apply, while AG ¶ 20(a) and 20(b) partially apply.

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.

¹⁸ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

¹⁹ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

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 has worked for her current employer for about 28 years. She has taken meaningful steps to resolve her delinquent debts. She is on the right track. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F.

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: FOR APPLICANT

Subparagraphs 1.a – 1.j: 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.

James F. Duffy
Administrative Judge