



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



In the matter of:)
)
) ISCR Case No. 11-06202
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant has a history of financial problems dating back to 2006. She presented no documentary evidence of efforts to resolve her delinquent debts. The evidence fails to establish Applicant’s financial responsibility in the resolution of her delinquent debts. Moreover, she has a history of violating the law, rules, and regulations. The record evidence fails to convince me of Applicant’s eligibility for a security clearance. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 16, 2010. On July 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ Applicant answered the SOR on August 17, 2012, and requested a hearing before an administrative judge.

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

The case was assigned to me on September 13, 2012. DOHA issued a notice of hearing on September 20, 2012, scheduling a hearing for October 16, 2012. At the hearing, the Government offered exhibits (GE) 1 through 7, which were received without objection. Applicant testified and submitted no documentary exhibits. (Tr. 18) DOHA received the hearing transcript (Tr.) on October 25, 2012.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.i, and 2.a through 2.d. She denied SOR ¶¶ 1.c, 1.d, 1.g, and 1.h. Her admissions are incorporated as findings of fact. After a thorough review of all the evidence, including her testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 26-year-old help desk technician employed by a government contractor. She graduated from high school in 2004, attended college from August 2004 until February 2005, and then again during 2007. She completed a few college courses, but not enough to earn a degree. Applicant has never married and she does not have any children.

From May 2004 until February 2006, Applicant worked part-time for several companies. From February 2006 until March 2010, she worked full-time for a defense contractor as a property administrator. She has been working full-time for her current employer, a government contractor, since March 2010. Applicant has possessed a security clearance at the secret level since April 2006. She received top secret clearance access in March 2010. There is no evidence to show Applicant has compromised or caused others to compromise classified information.

Applicant submitted her SCA in March 2010. In response to Section 22 (Police Record), Applicant disclosed that in September 2009, she was arrested for driving with a suspended driver's license. She also disclosed in response to Section 26 (Financial Record) that she defaulted on a loan. She claimed in her SCA that she was using a friend of the family as her financial advisor. She was going to review her credit report with her financial advisor to discuss possible courses of actions to resolve her debts.

Applicant was interviewed by a government investigator in April 2010 and February 2011. During both interviews, she was specifically asked about the delinquent debts alleged in the SOR. Applicant admitted that the SOR debts were her delinquent debts. She told the investigator that some of the medical debts were the result of cancer treatments she received from the end of 2007 through early 2009. In April 2010, Applicant told the investigator that she had made no effort to pay or resolve her

delinquent obligations. She expressed her intent to pay her delinquent debts and promised to start making efforts to repay her debts in the near future.

During her February 2011 interview, Applicant told the investigator that she established a payment plan with the creditor alleged in SOR ¶ 1.b. Applicant failed to produce documentary evidence to show contacts with creditors, agreements, or any payments made to satisfy any of the alleged SOR debts.

At her hearing, Applicant explained that her financial problems were the result of her cancer diagnosis and treatment. After her diagnosis, she was emotionally overwhelmed. She became irresponsible and disorganized. Although she continued working full-time throughout her cancer treatment (she did not take medical leave), she disregarded her financial obligations and let the debts accumulate. (Tr. 22) Most of her medical expenses were paid by her insurance. Applicant was only responsible for her share of the co-payments.

Approximately one year before the hearing, Applicant moved in with her parents to reduce her expenses and save money to pay her delinquent debts. She claimed her father helped her create a budget. She started making efforts to resolve her debts in February 2012. Her efforts consisted of sending letters to the credit bureaus disputing most of her delinquent debts and requesting information on the current creditors. She disputed the debts and requested information on the creditors notwithstanding the fact that she knew these were her delinquent debts and knew who the creditors were. Applicant presented no documentary evidence of contacts with creditors, agreements, or of any payments made. All of the SOR debts are unresolved. Applicant has not participated in financial counseling, except for seeking financial advice from a friend of the family.

During her April 2010 interview, Applicant discussed her September 2009 arrest and subsequent charge for driving with a suspended license. Her driver's license was suspended because of unpaid traffic tickets totaling approximately \$1,500. She was incarcerated and had to post bail. The charge was dismissed after she paid the delinquent tickets and her license was reinstated.

Applicant was interviewed again in February 2011. During this interview, Applicant volunteered that in November 2010, she was arrested and charged with driving with an expired registration and with possession of marijuana. In December 2010, Applicant was found guilty of driving with an expired registration and ordered to pay a fine and court cost totaling \$86. Applicant paid the fine on March 27, 2012.

On December 11, 2010, Applicant was charged with driving under suspension and with operating an unlicensed motor vehicle. In January 2011, she was found guilty of both charges in absentia, and ordered to pay fines and court cost. She paid the fine in March 2012.

In April 2011, Applicant pled guilty to possession of marijuana (from the November 2010 arrest), and she was granted a deferred disposition. She was sentenced to one year of supervised probation, 40 hours of community service, and her driver's license was suspended for six months. In April 2012, the possession of marijuana charge was dismissed after Applicant completed the terms of her deferred disposition.

Applicant's background investigation also revealed that in May 2007, Applicant used a coworker's Pentagon parking pass that was expired and had been altered. Applicant admitted she borrowed and used the parking pass, but denied she forged the parking pass, or that she knew it had expired. Applicant's coworker admitted responsibility for the parking pass alteration. (GE 5)

At her hearing, Applicant admitted she drove with a suspended driver's license to attend her security clearance hearing. She claimed that although she complied with all the terms of her probation, she could not renew her driver's license because she did not pass the vision test. She does not have a current prescription and eyewear. (Tr. 73-74) Applicant failed to present documentary evidence that she successfully completed the terms of her probation and community service.

Applicant would like a chance to retain her security clearance. She believes that she is in the process of getting her life and her financial situation back in order. She believes that she has matured and is behaving responsibly. Applicant claimed that she now understands the importance of being financially responsible and following laws and regulations. She would like to resolve her delinquent financial obligations. She needs her security clearance to retain her job, and retain the ability to pay all of 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)

Applicant has a history of financial problems that date back to 2007. Her financial problems continue as evidenced by the nine delinquent debts alleged in the SOR, totaling about \$11,000. 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 evidence fails to fully establish the applicability of any mitigating condition. Her financial problems are ongoing, she has a relatively large delinquent debt, and the evidence fails to show that she acted responsibly in the resolution of the debts, or that she acquired the debt under circumstances that are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's evidence failed to show how her medical condition contributed to or aggravated her financial situation. She has been fully employed since 2006. She did not take medical leave during her treatment, and most of her medical expenses were covered by her insurance. Applicant admitted that her financial problems were the result of her lack of organization and financial irresponsibility. Applicant did not act responsibly in her efforts to resolve her debts. She presented no documentary evidence of payments made, contacts with creditors, or of good-faith efforts to resolve her delinquent debts. Applicant presented evidence that she disputed some of her debts; however, she failed to establish that she has a legal basis for her disputes. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not apply. There is no evidence to show Applicant participated in financial counseling. Considering the number of debts, the small value of some of the debts, the aggregate total of the debts, and her lack of effort to resolve her debts, I cannot find that there are clear indications that her financial problems are being resolved or under control.

Questions remain about Applicant's current financial situation and her ability and willingness to resolve her delinquent debts. Considering that Applicant has been employed since 2006, she failed to provide a reasonable explanation for her failure to address even her smallest debts. On balance, the evidence available is insufficient to establish that Applicant has a track record of financial responsibility. AG ¶¶ 20(d) and

20(e) do not apply because Applicant failed to submit documentary evidence of efforts to resolve her debts. The remaining mitigating condition (AG ¶ 20(f)) is not applicable to the facts of this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Between September 2009 and October 2012, Applicant was involved in four traffic offenses: driving with a suspended license (2009); driving with expired registration (November 2010); driving under license suspension (December 2010); and operating an unlicensed motor vehicle (December 2010). In October 2012, Applicant drove to her DOHA hearing with a suspended driver's license. Additionally, in April 2011, she received a deferred disposition for her charge of possession of marijuana. It is not clear whether she successfully complied with the court's conditions.

Applicant's behavior triggers the applicability of the following disqualifying conditions under AG ¶ 16:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

AG ¶ 17 provides seven conditions that could mitigate the personal conduct security concerns. Considering the record as a whole, I find that none of the Guideline E mitigating conditions apply. AG ¶¶ 17(a), (b), (f), and (g) are not pertinent to the facts of this case. AG ¶ 17(c) does not apply because Applicant's possession of marijuana is not a minor offense. Moreover, she engaged in repeated traffic violations notwithstanding the fact that she was incarcerated and fined for some of her offenses.

Applicant's violations are likely to recur and cast doubt on Applicant's current reliability, trustworthiness, and judgment.

AG ¶¶ 17(d) and (e) do not apply because Applicant continues to engage in traffic violations, she has not modified her questionable behavior, and she has not taken steps to reduce her vulnerability to exploitation or duress. Applicant's overall behavior shows lack of judgment and an unwillingness to comply with rules and regulations. Her behavior raises questions about her reliability, trustworthiness, and ability to protect classified information.

Concerning SOR ¶ 2(a), I find the allegation unsubstantiated. Applicant denied altering the parking pass expiration date, and the owner of the parking pass admitted responsibility for the alteration.

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, 26, has seven years of experience working for government contractors while possessing a security clearance. Except for the current security concerns, there is no evidence of other problems or concerns while possessing a security clearance.

Notwithstanding, the record evidence fails to establish that Applicant showed financial responsibility in the resolution of her delinquent debts. Because of her experience working for federal contractors and holding a security clearance, Applicant knew or should have known about the importance of maintaining financial responsibility and about the requirement to follow rules and regulations. Considering the record as a whole, Applicant's financial problems and her extensive history of disregard for the law, rules, and regulations demonstrate a lack of 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.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against 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