



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



In the matter of:)	
)	
)	ISCR Case No. 11-06356
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/03/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 29, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). The 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 by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on April 21, 2012, and elected to have the case decided on the written record in lieu of a hearing. The Government’s written case was submitted on June 12, 2012. Department Counsel amended the SOR by withdrawing the allegation under Guideline E. A complete copy of the file of relevant

material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 21, 2012. Applicant timely submitted an answer to the FORM that was marked Applicant Exhibit (AE) A and admitted without objection. The case was assigned to me on July 31, 2012. The Government exhibits included in the FORM are also admitted.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. She is applying for a security clearance for the first time. She attended college for a period but did not earn a degree, and she also attended a trade school. Applicant married in 1992, separated in 2006, and divorced in 2008. She has three children, ages 21, 18, and 10.¹

Applicant has had financial issues for a number of years. She filed Chapter 7 bankruptcy in 2005, and her debts were discharged the same year. The bankruptcy petition listed \$10,235 owed to the Internal Revenue Service (IRS) for tax year 2003 and an additional \$42,746 in unsecured debts.²

Applicant filed Chapter 13 bankruptcy in August 2011. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$3,355 owed on a loan for a 1999 car and \$2,646 owed on a loan for furniture. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$16,434 owed to the IRS for tax years 2003 and 2004 and \$6,819 owed in state income taxes for the same years. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$38,396. The approved plan called for four monthly payments to the trustee of \$455, starting in September 2011, followed by 32 monthly payments of \$480.³

In April 2012, the trustee moved to dismiss the bankruptcy for failure to make payments. The trustee certified that Applicant was approximately three months in arrears. In June 2012, Applicant and the trustee reached a settlement that was adopted by the court. Applicant was ordered to resume making \$480 monthly payments, with additional monthly payments of \$267 for six months to cure the arrears of \$1,605.⁴

The SOR alleges Applicant's two bankruptcies and multiple delinquent debts totaling in excess of \$58,000. The debts include unpaid judgments and delinquent state and federal taxes from 2003 and 2004. Applicant admitted owing all the debts.

Applicant stated that her state and federal tax debts resulted from her ex-husband's failure to pay the appropriate taxes when he owned a business during those

¹ Items 5, 6; AE A.

² Items 4, 6, 7, 11.

³ Items 4, 6, 7, 12.

⁴ Items 4, 13-15; AE A.

two years. He named her as co-owner of the business, so she was also responsible for the taxes. She also admitted that they filed joint tax returns for the two years. She stated that she “was handling all bills that had [her] name, all medical bills and all necessities. It became too much so [she] had to file bankruptcy in 2005.” Her subsequent financial problems resulted from her separation and divorce, medical problems that were not covered by insurance, and time away from her job after a car accident and injuries at work. She also noted that her ex-husband stopped paying child support and money owed from their divorce agreement.⁵

Applicant received financial counseling as a requirement of her bankruptcy. Her back taxes are being paid by garnishment. She fell behind on her Chapter 13 bankruptcy payments when she was out of work on Workers’ Compensation. She contacted the bankruptcy court after she returned to work and entered into the agreement to catch up on her payments. She emphasized that she “is not irresponsible or untrustworthy. [She is] just a single parent trying to make ends meet and who needs her job to provide for her family.”⁶

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.”

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.

⁵ Items 4, 6, 7; AE A.

⁶ Items 6, 12; AE A.

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.

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 pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

Applicant blamed her ex-husband for her tax problems. However, they were then married and filed joint returns. She is jointly liable for their unpaid taxes. Her tax problems were not caused by events outside her control. Applicant's other financial problems were caused or aggravated by her separation and divorce; medical problems that were not covered by insurance; time off her job after injuries at work and a car accident; and her ex-husband's failure to pay child support and the money due her under her divorce decree. Those events were beyond Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant's debts were discharged in bankruptcy in 2005, providing her a fresh start. She incurred additional delinquent debts after the 2005 bankruptcy. She stated that her taxes are being paid through garnishment and her other debts will be paid through her Chapter 13 bankruptcy plan. That plan has been in effect for less than a year, and she fell three months behind in her payments. She returned to work and resumed her payments. She has not established a sufficient track record for me to conclude that she will maintain her payments through the conclusion of the Chapter 13 plan. Applicant received financial counseling as a requirement of her bankruptcy, but there is insufficient evidence for a determination that she acted responsibly and made a good-faith effort to repay or otherwise resolve her delinquent debts. Her financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first part of AG ¶ 20(c) is applicable; the second part is not. I find that security concerns remain despite the presence of limited mitigation.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has a history of financial problems, including a Chapter 7 bankruptcy, unpaid taxes, judgments, and other debts. She is attempting to resolve her debts through Chapter 13 bankruptcy. She missed three months of payments in the short period the bankruptcy plan has been in effect. Applicant has not convinced me that her finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations 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:	Against Applicant
Subparagraphs 1.a-1.mm:	Against Applicant
Paragraph 2, Guideline E:	Withdrawn
Subparagraph 2.a:	Withdrawn

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.

Edward W. Loughran
Administrative Judge