



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 11-07169
)
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Applicant for Security Clearance)

Appearances

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

08/29/2013

Decision

HOWE, Philip S., Administrative Judge:

On March 22, 2011, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On December 3, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on March 29, 2013. Applicant requested her case be decided on the written record in lieu of a hearing.

On May 10, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on May 21, 2013. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on June 7, 2013. Applicant did not file a Response to the FORM within the 30 day time allowed that expired on July 7, 2013. I received the case assignment on July 25, 2013. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegations in Subparagraphs 1.a, 1.b, 1.f to 1.i, 1.k, 1.l, 1.o to 1.r, and 1.t. She denied Subparagraphs 1.c to 1.e, 1.j, 1.m, 1.n, and 1.s. (Item 3)

Applicant is 49 years old. She is currently married to her second husband. She has one child with her first husband. The son is 23 years of age. She also has a 33-year-old daughter. Applicant works for a defense contractor in its warehouse. She has a security clearance and is seeking a renewal of that clearance. (Items 4 and 9)

Applicant owes money on 20 delinquent debts identified in the SOR, some dating to 2006. The majority have been delinquent since 2010. She admits owing 13 debts with a total of \$35,867.07. She denies owing seven debts that total \$3,974.38. Applicant did not submit any documents showing she disputed any debts other than her answers to several written interrogatories, in which she denied owing several telecommunications companies any money and thought her identity was stolen. Applicant also claims to be paying six delinquent debts, those listed in Subparagraphs 1.a, 1.h, 1.i or 1.q, 1.k, and 1.p, plus an unlisted debt to a home improvement store. These debts total \$27,612.69. Applicant also claims to pay \$200 monthly on the \$4,311.38 debt listed in Subparagraph 1.g owed to a bank. However, she did not attach any documents to show the current status of any of these installment payment plans. (Items 5-9)

Applicant owes the U.S. Government \$542 for 2008 income taxes. Her Answer states she is paying the Internal Revenue Service (IRS) \$100 monthly on 2010 taxes but does not state the amount owed. She claims the 2008 taxes are settled, but does not provide any documentation concerning the settlement amount or why the taxes were unpaid originally. (Items 5-9)

Applicant claims unemployment from December 2007 to July 2008, and from November 2009 to May 2010, caused her financial difficulties. These periods total about 15 months in the past 10 years. Her credit reports show a large number of credit-card transactions and other financial borrowings (62) during the same time period. Her April

2011 credit report contains 23 pages of activity, including charged off and paid debts. It also contains four collection actions with balances of about \$15,000. (Items 5-9)

Applicant did not submit any information containing efforts at financial counseling or budgeting to resolve her delinquent debts. Her May 2012 interrogatories answers assert she would pay the debts listed in Subparagraphs 1.s, 1.f or 1.r, and 1.o by May or July of 2012, but she did not do so because the debts continue to be listed in the credit reports and on the SOR.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt to income ratio, and/or other financial analysis.

From 2006 to the present, Applicant accumulated 20 delinquent debts, totaling \$39,841.45 that remain unpaid or unresolved. Applicant admitted 13 delinquent debts totaling \$35,867.07 and denied 7 debts in the amount of \$3,974.38.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three mitigating conditions might have partial applicability:

(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.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on her ability to repay her debts. In the past 12 years, Applicant has been unemployed only 15 months. Applicant did not demonstrate she acted responsibly under the circumstances. She failed to meet her burden of proof on that issue and it does not apply.

Applicant claims to be paying six delinquent debts on the installment plan. However, any information she attached to her Answer or her interrogatories is dated in 2012, so the current status of these efforts cannot be determined in a definitive manner. Again, she failed to meet her burden of proof on that issue and AG ¶ 20 (d) does not apply.

Applicant failed to prove AG ¶ 20 (c) applied because she did not submit sufficient evidence that she acted responsibly in resolving her delinquent debts during the time the debts were accumulating.

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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken sufficient and continuous action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Applicant's list of debts, including successful repayments of many obligations, shows a lack of restraint in monetary expenditures over time. The money spent in the past on a variety of credit cards could have paid the debts that are now delinquent. These actions show both a lack of planning, or an ability to live within Applicant's means, which are necessary for successful financial management. Her lack of action continues to this day, and is obviously voluntary. Applicant's spending history shows a pattern that caused her present financial situation. Her actions will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on a significant number of her delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a to 1.t:

Against Applicant

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.

PHILIP S. HOWE
Administrative Judge