



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



In the matter of:)
)
) ISCR Case No. 11-08109
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg Cervi, Esq., Department Counsel
For Applicant: *Pro se*

June 18, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has eight delinquent debts totaling \$406,353 and a 1997 Chapter 13 bankruptcy that was dismissed in 1999. She provided documentation that shows she has made a payment on one debt and contested another debt. She failed to produce sufficient documentation that her remaining debts have been addressed or otherwise satisfied. She has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 25, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations.¹ 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*

¹ Two different versions of the SORs were initially sent to Applicant on July 25, 2012. On January 17, 2013, the correct and final version of the SOR utilized in the case was resent to Applicant.

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on September 1, 2006.

Applicant's answer to the Statement of Reasons (Answer) was dated February 25, 2013. Applicant elected to have the case decided on the written record in lieu of a hearing in an email dated March 13, 2013. Department Counsel submitted the Government's written case on March 19, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on April 11, 2013. She was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. On June 3, 2013, Applicant submitted a nine page response (Response). Department Counsel did not object to Applicant's Response, although it was received after the 30 days afforded to her, and it was admitted into the record. The case was assigned to me on June 7, 2013.

Findings of Fact

Applicant is 53 years old. She is employed by a Defense contractor and has worked for her employer since April 2007. She is married. She has one adult child and two adult stepchildren. (Item 6.)

The Government alleged that Applicant is ineligible for a clearance because she has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information. The SOR identified eight delinquent debts totaling \$406,353 and a 1997 Chapter 13 bankruptcy that was dismissed in 1999. Applicant's debts appear in credit reports entered into evidence. Applicant admitted each of the debts in her Answer, with explanations. (Answer; Items 8-11.)

Applicant attributes her debts to a series of events beyond her control. In July 2009, Applicant was injured at work. Worker's compensation only paid her \$12.25 an hour during the two months she was out of work. After returning to work, her schedule was reduced from full time to three days per week. As a result, Applicant fell behind on her mortgage and other bills. (Item 4.) Her debts are as follows:

Applicant is indebted on a delinquent account in the amount of \$259 (as alleged in SOR ¶ 1.a). This debt was for a cable bill that was placed with a collection agent. Applicant presented a copy of her bank statement that shows a payment to this creditor in the amount of \$194.18, which was "pending" with her bank as of April 12, 2013. Applicant is working to resolve this debt. (Response.)

Applicant is indebted on a delinquent account in the amount of \$428 (as alleged in SOR ¶ 1.b). In August 2012, Applicant retained a law firm to represent her in settling her debts. Applicant provided documentation that this debt was being handled by that law firm. However, there is no current evidence that this account is settled, being paid, or otherwise resolved. (Item 4.)

Applicant is indebted on a delinquent account in the amount of \$228 (as alleged in SOR ¶ 1.c). Applicant provided an email dated April 12, 2013, which documented a payment of \$78.99 on an account ending in "0096." Applicant claimed that this account was paid in full, however, Applicant owes more than one debt to this creditor and the account number on the credit report for this debt (207551) fails to match with the account number on the receipt. Applicant failed to introduce sufficient documentation that this debt is paid or is otherwise resolved. (Response; Item 8.)

Applicant is indebted on a delinquent account in the amount of \$16,000 (as alleged in SOR ¶ 1.d). This debt was for a second mortgage. Applicant provided an unsigned stipulation for entry of judgment and a proposed order, proposing to pay this creditor \$100 per month beginning December 2012. The agreement called for payments to increase to \$400 per month in April 2013. She presented no documentation that this agreement was adopted or that any payments have been made under this plan. This debt is not resolved. (Item 4.)

Applicant is indebted on a delinquent account in the amount of \$3,356 (as alleged in SOR ¶ 1.e). Applicant asserted in her Answer that this debt was being satisfied through payroll deductions. She provided pay statements that show automatic payroll deductions per "Agreement" of \$154.36 on July 27, 2012; \$174.59 on August 23, 2012; \$226.52 on September 9, 2012; \$174.59 on September 20, 2012; \$172.06 on October 4, 2012; \$192.28 on October 18, 2012; \$154.36 on November 1, 2012; \$174.59 on November 15, 2012; \$154.36 on November 29, 2012; \$174.58 on December 13, 2013; \$176.23 on December 27, 2012; and \$203.74 on January 10, 2013. The pay statements fail to show to whom the payments were made. There is no documentary evidence of an agreement to pay this debt, or that established these payments were made to this creditor. This debt is unresolved. (Item 4.)

Applicant is indebted on a delinquent mortgage loan in the amount of \$384,000 (as alleged in SOR ¶ 1.f). Applicant was unable to afford her mortgage payments after her on-the-job injury. She was advised the only way to obtain a modification on the mortgage loan was to "be three months late." As a result of this advice, she became delinquent on the mortgage payments and pursued a modification with the lender. She was still attempting to negotiate a modification when the lender foreclosed upon the home in approximately November 2010. In August 2012 a law firm representing Applicant in this matter contacted this creditor in writing and disputed the debt under the state anti-deficiency law. Applicant provided documentation regarding this creditor's alleged fraudulent mortgage lending practices. Applicant provided no documentation establishing this dispute has been resolved. (Item 4; Item 7.)

Applicant is indebted on a delinquent account in the amount of \$1,423 (as alleged in SOR ¶ 1.g). In August 2012, Applicant retained a law firm to represent her in settling her debts. Applicant provided documentation that this debt was being handled by the law firm. However, there is no current evidence that this account is settled, being paid, or otherwise resolved. (Item 4.)

Applicant is indebted on a delinquent account in the amount of \$659 (as alleged in SOR ¶ 1.h). In August 2012, Applicant retained a law firm to represent her in settling her debts. Applicant provided documentation that this debt was being handled by the law firm. However, there is no current evidence that this account is settled, being paid, or otherwise resolved. (Item 4.)

Applicant petitioned for Chapter 13 bankruptcy in May 1997 (as alleged in SOR ¶ 1.i). This petition was dismissed in May 1999. In addition, Applicant also identified that she filed Chapter 13 bankruptcy in May 2003, alleging \$230,000 in debts. She withdrew that bankruptcy application three days after filing it. (Item 6; Item 10; Item 13.)

Applicant's Personal Financial Statement indicated she had \$1,721 available after paying her monthly living expenses. She also identified \$250,000 in assets. Other than engaging a law firm to negotiate with her creditors, she presented no evidence that she has utilized credit counseling services. (Item 7.)

Applicant provided no additional evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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.

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 has had financial problems since at least 1997, when she filed for Chapter 13 bankruptcy. Recently, she has accumulated eight delinquent debts totaling \$406,353. She has failed to satisfy the majority of these debts, despite having \$1,721 available each month after paying her living expenses. The evidence is sufficient to raise the above disqualifying conditions.

Five 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;

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

(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.

The evidence does not show that Applicant has fully resolved any of the debts alleged in the SOR. She has one payment to a creditor pending, and the other debts are unresolved. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant explained in her Answer that she incurred debts as a result of medical problems and underemployment. These were circumstances beyond her control. However, to be fully applicable AG ¶ 20(b) also requires that the individual demonstrate that she acted responsibly under the circumstances. Applicant has the funds available to make payments on her debts, but failed to present substantiated proof that she has done so, with the exception of the one account with a payment pending. I am unable to make a determination that she acted responsibly under the circumstances.

Applicant did not attend financial counseling. Although she hired a debt management firm to contact some of her creditors, there is no documentation to suggest they provided her financial counseling. Further, there is little indication that seven of Applicant's eight delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve her delinquent debts. While she hired a law firm to help her negotiate some of her debts in August 2012, there was no evidence of any payments or progress toward the settlement of

these debts presented. The record fails to establish that any payments have been made on the majority of her SOR listed debts. AG ¶ 20(d) is not applicable.

Applicant presented evidence to show that she was in the process of formally disputing her \$384,000 mortgage debt. AG ¶ 20(e) is applicable, in part, to this debt.

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 the 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant failed to address her financial delinquencies. While she has experienced events beyond her control that created a financial hardship, she now has a monthly surplus. She failed to use that surplus to address her delinquent obligations. Further, she has a history of delinquent debt dating back to 1997 and continuing to the present day. Accordingly, continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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:	For Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge