



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



In the matter of:)
)
) ISCR Case No. 11-08560
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

January 24, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of financial indebtedness. She currently has 12 delinquent debts totaling \$22,130 and failed to submit proof that she has made payments on any of them, that any are satisfied, or that she properly disputed them. In addition, she failed to disclose her financial delinquencies, as required, when completing her electronic questionnaires for investigations processing (e-QIP). She has not mitigated the Financial Considerations and Personal Conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 16, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline 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) effective on September 1, 2006.

Applicant's undated Answer to the Statement of Reasons (SOR) was received by DOHA on October 1, 2012. In an email dated October 2, 2012, Applicant elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 16, 2012. A complete copy of the file of relevant material (FORM) was received by Applicant on November 29, 2012. She was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. As of January 10, 2013, she had not responded. The case was assigned to me on January 11, 2013.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. She has worked for her current employer from February 2011 to present. On her e-QIP, she identified either full or part-time employment since February 2002, with no periods of unemployment. She indicated she was single and listed no children. (Item 5.)

Applicant's credit reports from March 12, 2011 and May 29, 2012, and her answers to interrogatories, show that Applicant was indebted to 12 creditors in the amount of \$22,130 as alleged in SOR ¶¶ 1.a through 1.l. She failed to present any documentation that she is repaying any of her delinquent accounts, despite her assertion in her Answer that she paid off 1.a and made payment arrangements with the creditors noted in ¶¶ 1.b through 1.f, 1.i, and 1.k. She indicated that she disputed the debt listed in 1.l, but gave no proof of her dispute. (Item 4; Item 6; Item 7; Item 8.) The debts are as follows:

Applicant is indebted on a judgment filed against her by a furniture store in the approximate amount of \$885, as alleged in ¶ 1.a. This debt has been past due since May 2010. (Item 8.)

Applicant is indebted on a collection account owed to a bank in the approximate amount of \$4,806, as alleged in ¶ 1.b. This debt has been past due since September 2011. (Item 8.)

Applicant is indebted on a credit card account in the approximate amount of \$2,728, as alleged in ¶ 1.c. This debt has been past due since before November 2009. (Item 8.)

Applicant is indebted on a collection account owed to a bank in the approximate amount of \$2,600, as alleged in ¶ 1.d. This debt has been past due since before November 2011. (Item 8.)

Applicant is indebted on a collection account owed to a bank in the approximate amount of \$2,131, as alleged in ¶ 1.e. This debt has been past due since before September 2010. (Item 8.)

Applicant is indebted on a collection account owed to a bank in the approximate amount of \$1,500, as alleged in ¶ 1.f. This debt has been past due since before November 2010. (Item 8.)

Applicant is indebted on a collection account in the approximate amount of \$105, as alleged in ¶ 1.g. This debt has been past due since January 2011. (Item 7.)

Applicant is indebted on a collection account in the approximate amount of \$205, as alleged in ¶ 1.h. This debt has been past due since January 2011. (Item 7.)

Applicant is indebted on a collection account owed to a bank in the approximate amount of \$3,487, as alleged in ¶ 1.i. This debt has been past due since September 2009. (Item 7.)

Applicant is indebted on a collection account in the approximate amount of \$142, as alleged in ¶ 1.j. This debt has been past due since January 2011. (Item 7.)

Applicant is indebted on a collection account in the approximate amount of \$3,400, as alleged in ¶ 1.k. This debt has been past due since May 2012. (Item 8.)

Applicant is indebted on a collection account in the approximate amount of \$141, as alleged in ¶ 1.l. This debt has been past due since January 2011. (Item 8.)

Applicant's e-QIP dated March 1, 2011, contains negative replies to the questions pertaining to her financial history. Specifically, she denied having any judgments rendered against her (Question 26.e); having had bills turned over to collection agencies (Question 26.g); and having any account or credit card suspended, charged-off, or cancelled for failing to pay as agreed (Question 26.h). In her Answer, she admitted having been over 180 days delinquent on any debt (Question 26.m); and being over 90 days delinquent at the time she completed her e-QIP (Question 26.n). Applicant claimed that she was unaware of the judgment; had not been contacted by a collection agent; and had no credit cards canceled. However, she acknowledged "I just finished from school and yes I was late for some payments." She failed to acknowledge her debts to the Government until she was confronted by a Government investigator in March 2011. (Item 3; Item 4; Item 5.)

Applicant submitted a personal financial statement with her answers to interrogatories. On the financial statement she indicated that her monthly net income was \$2,478.92 and her expenses, without any apparent payments on her delinquent accounts listed above, was \$2,415 monthly. (Item 6.)

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 security 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 accumulated a number of delinquent debts and she has been unable or unwilling to pay her obligations. Further, she had experienced financial problems since 2009, without resolution, and continued to amass additional debts in 2010 and 2011. 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 resolved any of the 12 debts alleged in the SOR. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant has been employed either full or part time since February 2002, with no periods of unemployment. She explained in her Answer that she incurred her debts while a student. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has worked for her current employer from February 2011 to present. She did not submit evidence of any payments, even on the smallest debts. She did not present a plan on how she will address her delinquent debts or provide other evidence to show any recent progress in addressing her debts. She has little income with which to satisfy her delinquent obligations. I am unable to make a determination that she acted responsibly under the circumstances.

Applicant did not produce any evidence to suggest she attended any financial counseling. Further, there is little indication that Applicant's 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. The record fails to establish that any payments have been made on any of her 12 debts. AG ¶ 20(d) is not applicable.

Applicant disputed owing the debts alleged in ¶ 1.I. in her answer to the SOR. However, she presented no evidence to show that she was in the process of formally disputing this debt or that she had successfully disputed this debt in the past. AG ¶ 20(e) is not applicable.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied falsifying Questions 26.e, 26.g, and 26.h on her e-QIP because she was unaware of a judgment against her, did not believe that she had accounts in collections and did not have any credit cards cancelled. Her explanations with respect to

these questions are not credible. The judgment against her was filed in May 2010. She had a credit card accounts in collections beginning in 2009, and failed to disclose that an account or credit card had been suspended or closed by the bank. She admitted in her Answer that she was late on payments to creditors because she had just finished school. She did not disclose those delinquent accounts to the government when she completed her e-QIP. Instead, she waited until the Government investigator questioned her on the delinquent accounts to disclose her financial delinquencies. The Government has established sufficient concern under AG ¶ 16(a) to disqualify Applicant from possessing a clearance.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's falsification is unmitigated. The record contains no evidence that she sought to correct the falsification promptly after completing the application. Instead, she waited to disclose the debts until she was confronted by a Government investigator. Therefore AG ¶ 17(a) does not apply. Applicant offered no proof that she falsified her application based upon the ill advice of another. AG ¶ 17(b) does not apply. Falsification of information provided to the Government cannot be considered minor. Her conduct reflects negatively on her trustworthiness and good judgment. AG ¶ 17(c) is inapplicable. Applicant failed to fully acknowledge her falsification and she has taken no remedial steps to show such behavior is unlikely to recur. Therefore AG ¶ 17(d) does not apply. Similarly, she presented no evidence of positive steps taken to reduce or

eliminate vulnerability to exploitation, manipulation, or duress. AG ¶ 17(e) is inapplicable.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has had ample opportunity to address her financial delinquencies since becoming gainfully employed, but has failed to do so. She also failed to be honest with the Government on her e-QIP. 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 or Personal Conduct 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.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	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