



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



In the matter of:)
)
) ISCR Case No. 11-09742
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2013

Remand Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 19, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR in writing on November 22, 2012, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted in February 2013. 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 February 25, 2013. As of April 19, 2013, she had not responded. The case was assigned to me on April 23, 2013. The Government exhibits included in the FORM were admitted.

I issued my decision on April 29, 2013, denying Applicant's eligibility for access to classified information. Applicant appealed the decision. On July 8, 2013, the Appeal Board remanded the case for a new decision. The Appeal Board determined that the decision did not adequately address AG ¶ 20(b), and directed that "[o]n remand, the Judge should issue a new decision after applying the second prong of AG ¶ 20(b) to the specific facts of the case."

At my direction, on July 16, 2013, Department Counsel contacted Applicant and gave her until July 31, 2013, to provide any additional material she would like to have considered. I granted Applicant's request to extend the time until August 7, 2013. Applicant submitted an e-mail with an attachment. The e-mail and the attachment are marked Applicant's Exhibits (AE) A and B, and admitted without objection

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. She has worked for her current employer since September 2010. She served in the U.S. military from 2000 until she was honorably discharged in 2005. She seeks to retain her security clearance, which she has held since about 2005. She attended college for a period but did not earn a degree. As of March 2011, she had never married and she had no children.¹

Applicant had periods of unemployment after she was discharged from the military. She was unable to pay all her bills, and a number of debts became delinquent.²

The SOR alleges 11 delinquent debts. All of the debts appear on at least one credit report. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a (\$4,390), 1.b (\$3,965), 1.d (\$4,777), 1.e (\$5,029), 1.g (\$7,455), and 1.h (\$5,926). She denied owing the remaining debts.³

Applicant paid the \$1,126 delinquent debt to a collection company that is alleged in SOR ¶ 1.c. The original debt of about \$3,000 was charged off by a bank and transferred to the collection company. The collection company sued Applicant. In March 2011, Applicant agreed to a settlement order in which she would pay the collection company \$3,358 plus costs, through monthly payments of \$728. Applicant made at least one payment before the collection company moved the court to reinstate the matter because Applicant was late on her payments. Applicant stated that she was unable to maintain the settlement payments because her car needed repair and she

¹ Items 5, 9.

² Items 5, 6.

³ Items 4, 7, 8.

could not afford to pay both. The remainder of the debt was paid through garnishment before Applicant responded to the SOR on November 26, 2012.⁴

Applicant denied owing the \$100 delinquent debt to a utility company that is alleged in SOR ¶ 1.f. She stated that she had never heard of the creditor, and it is not listed on her current credit report. The debt is reported by Equifax on the March 2011 combined credit report as being opened in August 2003, with a date of last action of August 2007. The debt is also listed on the February 2013 Equifax credit report. The name of the creditor is an abbreviated nickname of the city where Applicant lived from 2003 through 2009.⁵

The debt alleged in SOR ¶ 1.i is a duplicate of the debt alleged in SOR ¶ 1.e. The \$4,894 delinquent debt to a collection company on behalf of a bank (SOR ¶ 1.i) was transferred to a different collection company. Applicant admitted owing the transferred debt as alleged in SOR ¶ 1.e.⁶

Applicant paid the \$156 delinquent debt to a collection company that is alleged in SOR ¶ 1.j. The balance of the debt was \$4,101 in September 2010. Applicant made four \$1,004 payments from September through December 2010. The relatively small balance was paid sometime thereafter.⁷

Applicant established that she paid \$467 in June 2012 and another \$467 in July 2012 toward the \$1,335 delinquent loan to a collection company on behalf of an online university (SOR ¶ 1.k). She stated that the debt is paid and that her current credit report lists the debt as paid. The debt is not listed on the February 2013 Equifax credit report. I am satisfied that the debt has been paid.⁸

Applicant admitted owing the remaining six debts, which total in excess of \$31,000. In August 2012, she wrote in response to DOHA interrogatories that upon the completion of her wage garnishment, she would contact her creditors “as funds become available.”⁹

Applicant did not submit any documents in response to the SOR, and she did not respond to the FORM. After the remand, she was given the opportunity to submit additional material, including documents establishing any payments toward her debts. She responded:

⁴ Items 4-8.

⁵ Items 4, 6-8.

⁶ Items 4, 6-8.

⁷ Items 4-8.

⁸ Items 4, 6-8.

⁹ Items 4, 6-8.

I did try to make payment arrangements with a few of my creditors and what they were requesting was more than what I could afford to do at the time so I found a non-profit consumer credit counseling organization that was able to give me a consultation and work out a plan to get me completely out of debt in the next few years.¹⁰

Applicant contracted with a debt management company on August 5, 2013, to assist her in resolving her debts. She enrolled 11 debts, totaling \$35,703, in the company's debt management program (DMP). The estimated duration of the DMP is 37 months. Applicant agreed to an initial deposit of \$50, followed by payments of \$520 every other week, starting on August 30, 2013. After the company's monthly maintenance fee, the company agreed to make monthly payments of \$976 to her creditors. Applicant receives financial counseling as part of the program.¹¹

The debts alleged in SOR ¶¶ 1.a, 1.d, 1.e, 1.g, and 1.h are included in the DMP. The debt alleged in SOR ¶ 1.b is not specifically included in the DMP, but the debt could have been transferred to another collection company. There is a debt with an amount due that is close to the amount owed on the SOR ¶ 1.b debt. The total amount owed on the six debts discussed above is listed in the DMP as \$32,904. Four of the debts in the DMP are not delinquent.¹²

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."

¹⁰ AE A.

¹¹ AE B.

¹² AE B.

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 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. The following 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;
- (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.

Applicant had periods of unemployment after she was discharged from the military. Applicant's unemployment was beyond her control, establishing the first prong of AG ¶ 20(b). The second prong of AG ¶ 20(b) requires that the individual act responsibly under the circumstances.

Applicant paid the debts alleged in SOR ¶¶ 1.c, 1.j, and 1.k. The debt alleged in SOR ¶ 1.i is a duplicate of the debt alleged in SOR ¶ 1.e. She denied owing the \$100 debt alleged in SOR ¶ 1.f, stating that she had never heard of the company, but the name of the creditor is an abbreviated nickname of the city where Applicant lived from 2003 through 2009. The total amount of the six debts that Applicant admitted owing is more than \$31,000.

In August 2012, Applicant wrote in response to DOHA interrogatories that upon the completion of her wage garnishment, she would contact her creditors "as funds become available." The garnishment was completed before Applicant responded to the SOR on November 26, 2012. She has not established that she has made any payments towards her delinquent debts since the garnishment. She contracted with a debt management company on August 5, 2013, to assist her in resolving her debts, but it is too soon to conclude that she will make the DMP payments of \$520 every other week.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.

See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a plan to pay her debts through the DMP, but she has not taken significant actions to implement the plan. There is insufficient evidence for a determination that Applicant's financial problems are under control or that they will be resolved within a reasonable period. Applicant's financial problems are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant made payments toward her delinquent debts in 2010, 2011, and 2012, but there is no evidence that she made any payments since at least November 2012. Because it has been more than eight months since Applicant made any payments, I am unable to conclude that she acted responsibly under the circumstances. The second prong of AG ¶ 20(b) is not applicable.

Applicant receives credit for her financial counseling, establishing the first prong of AG ¶ 20(c), but there is insufficient evidence for a determination that Applicant's financial problems are under control or that they will be resolved within a reasonable period. The second prong of AG ¶ 20(c) is not applicable.

AG ¶ 20(d) is applicable to the paid debts alleged in SOR ¶¶ 1.c, 1.j, and 1.k. It is not applicable to any of the other debts. AG ¶ 20(e) is applicable to the duplicate debt alleged in SOR ¶ 1.i. It is not applicable to any of the other debts. I find that security concerns remain despite the presence of some 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 this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service. However, the information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance. Applicant has a plan to pay her debts through the DMP, but she has not taken significant actions to implement the plan. What is missing is a track record of payments and financially responsible behavior.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.h:	Against Applicant
Subparagraphs 1.i-1.k:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge