



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



In the matter of:)	
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)	ISCR Case No. 11-10108
)	
Applicant for Security Clearance)	

Appearances

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

10/23/2013

Decision

HOWE, Philip S., Administrative Judge:

On February 9, 2009, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP; SF 86). On January 2, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 acknowledged receipt of the SOR on January 8, 2013. She answered the SOR in writing on January 30, 2013, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on or after February 1, 2013. Department Counsel was prepared to proceed on April 30, 2013, and I received the case assignment on June 10, 2013. DOHA issued a

Notice of Hearing on August 2, 2013, and I convened the hearing as scheduled on August 19, 2013.

The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibit A, without objection. DOHA received the transcript of the hearing (Tr.) on August 30, 2013. I granted Applicant's request to keep the record open until September 4, 2013, to submit additional matters. Applicant requested additional time to submit documents and I extended the time to September 9, 2013, without objection from Department Counsel. On September 9, 2013, she submitted Exhibits B to F, without objection. I marked as Exhibit G the Department Counsel's email message relaying Applicant's request to be put on probation for one year so that she can pay other debts listed in the SOR. The Department Counsel objected to this request because DOHA has no probation authority. The record closed on September 9, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR Applicant admitted all the factual allegations of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 32 years old, married, and has four children, the oldest being 16 years old. She has a heart condition and her husband is on disability. He is 31 years old and earns about \$3,000 monthly when working full-time. They live with her parents because they had a fire at their house in 2009 and have been repairing it since then. They acquired the house when her husband inherited it in 2006. Their house has no mortgage on it. Applicant works for a defense contractor earning about \$49,000 annually. Her bi-monthly pay checks are about \$1,400. She is the sole source of her family's income. Applicant started working for the contractor about one year ago and has the title of a financial manager for her employer. (Tr. 20-24, 33-37, 48, 63, 70, 71; Exhibits 1, 2)

Applicant has been married twice. She divorced her first husband in 2000. She had large debts from that marriage and filed Chapter 7 bankruptcy in 2005. Having married her present husband in 2003 she included his debts in that bankruptcy petition. The bankruptcy court discharged both of them of their delinquent debts in April 2006. (Tr. 46, 47; Exhibits 1-4, 6)

Applicant transferred from her home city to another city 90 miles away in 2006 when her job with the Defense Finance and Accounting Service (DFAS) was moved in a consolidation of offices. She needed a car for the commute. After starting her job in the new city she discovered in 2007 that she had a heart condition, which caused her problems. She took medical leave for three months in 2007, which adversely affected her ability to pay her debts. She tried to take a medical retirement but was denied. Applicant did not work from 2007 to 2009, except for managing her bar, discussed

below. In 2009 she started work in the financial management realm for a defense contractor. As contracts were won or lost in the bidding process, she managed to find similar positions with different contractors. She has not had heart seizure since 2012 and takes medicine for her condition. (Tr. 32, 38, 40, 49; Exhibits 1-4, 6)

Applicant managed and owned a bar in her area for five years. She sold the bar in August 2012 for a price of about \$50,000 by trading the bar for a Corvette automobile, which she then traded to an auto dealer for a sports utility vehicle and about \$30,000 in cash. With that money Applicant paid \$19,000 in debts owed by the bar because they followed the liquor license that the bar had. The debts were incurred by her husband's grandfather when he owned the bar. Her husband wants to pay the additional debt of a tax lien of \$9,000 dating from before 2005 so that his mother and sister are not liable for them. He is trying to pay on the installment basis with the Internal Revenue Service (IRS). Applicant had a balance of \$10,000 she used to pay for some house repairs. (Tr. 24- 26, 31,36, 60, 86; Exhibits 1-4, 6)

On her 2009 SF-86 Applicant listed her automobiles as a 2005 Chrysler Pacifica and a 2004 Cadillac CTS. Those two automobiles were wrecked in an accident in front of her parent's house in April 2013 when a speeding automobile crashed into them. She and her husband bought two new cars in the past year. Applicant bought a 2012 Chevrolet Traverse when her older car, which she apparently purchased before the accident kept breaking down and had to be replaced. After the crash in front of her parent's house her husband purchased a Chevrolet Malibu. The total purchase price of both vehicles was almost \$50,000. She has two credit accounts for the vehicles, with balances of \$22,152 and \$18,093 for a total of \$40,245. She made a down payment on the Traverse of \$13,000 and has a monthly payment of \$497. The Malibu's monthly car payment is \$475. They pay \$350 monthly insurance on the cars for a basic policy under state law. As stated above, her pay check each pay period is about \$1,400 from which she has to pay these car expenses and support her family. (Tr. 63-65; Exhibits 3, 4, 6)

Applicant admitted the 24 allegations listed in the SOR. The first allegation is that she filed Chapter 7 bankruptcy in October 2005 and was discharged in April 2006. The remaining 23 allegations total \$11,406 of delinquent debt. The delinquencies in 13 of the allegations are under \$200 each. One debt is dated in 2006, several from 2007, and the others from later years up to the present time. Applicant claims she tried to contact the creditors to resolve the debts, but made no progress because the debts kept being sold and bought by collection agencies. She also wanted her business attorney to handle the debt problem but his fee was too high for her to pay. (Tr. 31; SOR; Exhibits 1-6)

Applicant is attempting to repay some of her debts through a debt management firm. She pays a standard amount of money on the 10th of each month to the company. This money goes into an escrow account controlled by the debt management company. Her initial fee was \$150. She started that program in May 2013, five months after her receipt of the SOR. That plan shows a total debt to be repaid of \$8,830, not the amount of \$11,406 listed in the SOR. There are seven debts listed in the SOR that are also

listed in the debt repayment plan. They are subparagraphs 1.c for \$102; 1.l for \$1,379; 1.o for \$80 (though the plan lists the debt as \$179); 1.p for \$6,671; 1.q for \$314; 1.t for \$349; and 1.x for \$188. The remaining 16 SOR debts are not in the debt repayment plan. The debts listed in the SOR and the debt repayment program are unresolved. They are in the process of resolution but no schedule for payment or priority plan of payment was submitted. (Tr. 42-45, 56-59, 66, 67, 75, 76; Exhibits 1-6, A-G)

Applicant claims she paid her student loans, a medical account for \$136 listed in Subparagraph 1.b of the SOR, a \$70 medical bill that does not appear in the SOR, and a bank judgment for \$11,355 in 2009 that is not listed in her SOR. However, there is no documentary proof of such payments, except for the student loans she repaid in 2011 for \$3,209 and the bank judgment that was paid and satisfied in June 2011. (Tr. 42-45, 56-59, 66, 67, 75, 76; Exhibits 1-6, A-G)

Applicant receives child support of \$375 monthly from the father of her first two children. Her husband pays about \$400 in child support for his child from a prior relationship. (Tr. 34, 63, 91; Exhibits 1-4, 6, A –G)

Applicant submitted three letters of recommendation from three supervisors. They all rate her highly in the categories of professionalism, character, and hard work, ability to accomplish complicated and tedious tasks in half the time of her peers, trustworthiness, and integrity. They highly recommend her for employment and a security clearance. (Answer attachments)

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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, 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.

Section 7 of Executive Order 10865 provides that 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 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. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$11,406 in delinquent debt from 2006 to the present time that remains unpaid. Applicant has 23 delinquent debts listed in the SOR. Her current debts were incurred after her 2005-2006 Chapter 7 bankruptcy.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

(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; and

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

Applicant was unemployed for two years. During that time she managed her bar. She also had a heart condition, for which she continues to take prescribed medication. That medical situation made it difficult for her to commute to her new job location in a city other than her home town. However, Applicant did incur numerous debts during the past six years that she did not appear to make any effort to repay. Finally, after receiving the SOR, she retained a debt management company that has not repaid any of the debts during the three months that they have taken Applicant's monthly payments of \$215. Applicant has not acted responsibly under the mitigating condition. AG ¶ 20 (b) does not apply.

Applicant did retain the debt management company. She is making regular automatic payments to them. From her testimony and the documents about the repayment arrangements, it is clear Applicant believes she has made a start to repaying her delinquent debts. However, only seven debts listed in the SOR appear on the Exhibit E, which is the list of debts from the debt repayment plan. AG ¶ 20 (d) does not apply because Applicant has not made a good-faith effort to repay her delinquent debts in an orderly manner. She is only paying part of her delinquent debts under the debt repayment program and did not submit any information about any efforts to repay the remaining 16 delinquent debts.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is involved with her husband's family and their bar with its tax debts. Her house burned three years ago and she, with her husband, have taken an extraordinary time to have it repaired. Meanwhile, to replace two older model automobiles damaged in a residential neighborhood collision, they purchased two new model automobiles and currently have car debt of \$40,425 with monthly payments of \$975 for both cars. These were excessive purchases under the circumstances of Applicant's delinquent debts. She could have paid her debts from the money received from the various transactions involving the bar that she used for her car down payment. It is obvious that the medical and family situations have diverted Applicant's attention from her duty to repay her debts. This demonstrates a lack of judgment on her part. It also shows unreliability.

I considered the excellent recommendations from her supervisors. They show Applicant is an excellent worker in that organized environment. However, she does not seem to be able to pay her delinquent debts in a timely manner, which with her financial management experience should be easy for her to do.

Overall, the record evidence leaves me with questions or 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 from her 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
Subparagraph 1.a to 1.x:	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