



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



In the matter of:)
)
-----) Case No. 11-10740
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/27/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns related to Guideline F. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On May 18, 2011, Applicant submitted a Security Clearance Application. On February 14, 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 DOD on September 1, 2006.

In an answer dated March 18, 2013, Applicant admitted 10 of the 11 debts reflected in allegations ¶¶ 1.a-1.k, but generally disputed the balances noted. (FORM, Item 4) She also requested a decision without a personal hearing. Counsel for DOD prepared a Form of Relevant Material (FORM) containing nine attachments to support the Government's position in this case. Applicant timely responded to the FORM with a letter and two attachments. Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 13, 2013. I thoroughly reviewed the FORM and other case

file materials. Based on the materials submitted, I find that Applicant failed to meet her burden in mitigating financial considerations security concerns. Clearance is denied.

Findings of Fact

Applicant is a 53-year-old technical planning manager who has worked for the same defense contractor since September 2005. She served in the United States Army for three years, from August 1978 to July 1981. Soon thereafter, she earned a diploma in industrial electronics from a vocational school. Applicant has been continuously employed without any notable interruption since at least the late 1990s. She has a domestic partner with whom she has cohabitated since 2010. Applicant has no children. In completing her 2011 Security Clearance Application, Applicant disclosed some delinquent accounts under the section regarding personal finances. The SOR alleges 11 debts, amounting to approximately \$40,000. As discussed below, Applicant denies the debt noted at ¶ 1.c, which is alleged to represent an obligation of about \$11,433.

The debts noted in the SOR, as set forth in her January 2013 and August 2012 credit reports, as well as her personal financial statement, are as follows:

1.a - Medical Collection - \$104 - Applicant admits this debt was owed, but wrote that it has been paid. No documentary evidence of its satisfaction, however, was offered.

1.b - Collection - \$3,282 - Applicant admits that this debt is owed, but wrote that the correct balance was \$3,272.93. No explanation is provided regarding this discrepancy.

1.c - Collection - \$11,433 - Applicant denies this allegation. However, she introduced no documentation showing correspondence with the creditor, no repayment plan, or other evidence indicating that the obligation was satisfied or successfully disputed.

1.d - Medical Collection - \$851 - Applicant admits this debt is owed. There is no evidence indicating she has worked with her creditor on this obligation.

1.e - Charged-Off Account - \$8,994 - Applicant admits that this debt is owed. There is no evidence indicating she has worked with her creditor on this obligation.

1.f - Charged-Off Account - \$327 - Applicant admits that this debt is owed. There is no evidence indicating she has worked with her creditor on this obligation.

1.g - Charged-Off Account - \$2,955 - Applicant admits that this debt is owed. In her response to the FORM, Applicant offered an October 17, 2013, letter from the creditor indicating that a postdated payment in the amount of \$955 would be processed on October 25, 2013, and applied toward a repayment plan. There is no evidence showing this initial payment was transacted.

1.h - Charged-Off Account - \$9,267 - Applicant admits that this debt is owed. In her answer to the SOR, she wrote "went to mediation, payment plan in progress." In

response to the FORM, Applicant introduced a copy of a Settlement Agreement and Release indicating the debt had been settled for \$4,040 under a payment plan. The plan was to include an initial payment of \$2,000 by January 21, 2013, followed by monthly payments of \$170. Applicant wrote in her cover letter to her response to the FORM that she had timely made payments on the plan and that her payments were to be completed by December 2013. However, the evidence submitted does not substantiate this claim or document her payments.

1.i - Charged-Off Account - \$3,004 - Applicant admits that this debt is owed. It is unclear whether it is the same debt as the obligation set forth in 1.b. There is no evidence indicating she has attempted to address this debt.

1.j - Telecommunication Collection - \$139 - Applicant admits that this debt was owed, but wrote that it has been paid. There is no evidence, however, showing that this debt has been satisfied.

1.k - Telecommunication Collection - \$354 - Applicant admits that this debt was owed, but wrote that it has been paid. There is no evidence, however, showing that this debt has been satisfied.

Applicant's November 2012 personal financial statement reflects a net monthly remainder of \$3,758.99. In her response to the SOR, she characterized her delinquencies as "unacceptable and careless" and wrote that she aimed to have her debts resolved in 2014. (FORM, Item 4, at 1) Her explanation for how her debts were created is unclear. In her March 16, 2013, cover letter accompanying her response to the SOR (FORM, Item 4, at 1), she wrote:

I admit to being lazy and procrastinating. . . . In 2008, my family situation changed such that I took on additional responsibilities as well as a new partner. My financial health took a downturn during that time period and I've simply not recovered.

There is no documentary evidence indicating Applicant received financial counseling to help her address her finances. Her approach or plan for addressing her outstanding debts remains unclear. Applicant's most resent assessment of how she has addressed her debts was stated thusly: "[m]y last action was to write to each creditor and ask for them to itemize and legitimize their claims prior to entering in to a repayment agreement with them. Some creditors have responded and some have not. It is my express desire to have these creditors paid by the end of 2014. . . ." (FORM, Item 4, at 1). Applicant submitted no documentation demonstrating the efforts alleged.

In her October 22, 2013, response to the FORM, Applicant wrote she had made progress "mending" her credit and "repaying" her debts. She also wrote that she was working on negotiating payment plans on the debts noted at ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.i. No documented evidence of such efforts was introduced.

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 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, these guidelines are applied 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 not drawn 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 applicant or proven by Department Counsel and 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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has multiple delinquent debts amounting to about \$40,000. Applicant admits responsibility for the majority of the debts at issue. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns [AG ¶ 20(a) - AG ¶ 20(e)]. In this case, the debts at issue are multiple in number and remain largely unaddressed, despite a net monthly remainder of approximately \$3,750. So few facts about these debts and how Applicant has tried to approach them are known. Therefore, AG ¶ 20(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*] does not apply.

Moreover, Applicant cites to carelessness, laziness, and procrastination for her delay in addressing her delinquent debts; she only vaguely attributes the creation of her obligations to unidentified changes in her home life in 2008 that led to financial difficulties. Without more specificity regarding the creation of these delinquent debts and her efforts to address them, AG ¶ 20(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*] does not apply. Further, there is no evidence that Applicant has received financial counseling or made notable progress in addressing her multiple debts. Consequently, AG ¶ 20(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*] does not apply.

There appears to be some progress on at least two debts in terms of having negotiated repayment plans. There is insufficient documentary evidence, however, showing that Applicant has successfully commenced payments on those plans and also established a significant record of timely and consistent payments on those plans. Further, regarding those obligations she claimed to have been paid, the record lacks

documentation confirming her assertions. Given these considerations, it cannot be discerned whether AG ¶ 20(d) [*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*] applies. Finally, to the extent Applicant admits all but one of the SOR allegations and provided no documentary evidence of formally disputing any of the accounts at issue, AG ¶ 20(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*] does not apply.

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). 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 limited facts and circumstances noted in this case. I incorporate my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, others may have warranted additional comment.

Applicant is a 53-year-old technical planning manager who has worked for the same defense contractor since September 2005. From 1978 to 1981, she served in the United States Army. She then earned a diploma in industrial electronics from a vocational school. Applicant has been continuously employed without any notable periods of unemployment or underemployment since the late 1990s. She is domiciled with a domestic partner and has no children. Applicant admits the vast majority of the debts at issue. She cites to procrastination for her failure to address debts which first began accumulating during undefined life changes from circa 2008.

The main concern in this case is related to 11 delinquent debts. How these debts were created remains as unclear as how they became delinquent. The evidence showing Applicant's attempts to address these debts is scant. The balance on one obligation seems to have been lowered subject to a settlement agreement, but there is no evidence reflecting what, if any, progress has been made on that plan. Another repayment plan is referenced. However, there is insufficient documentation to show that a meaningful record of timely and regular payments on that plan has been made. The rest of the delinquent accounts at issue lack evidence either reflecting the Applicant's attempts to address them or showing their current status. In short, Applicant's written narrative and submissions fail to establish that she has devised and successfully implemented a reasonable plan for addressing her delinquent debts – despite a significant monthly net remainder of slightly over \$3,750. Finally, while there is no reason to doubt Applicant's loyalty or honesty, her submissions are insufficient to

mitigate the security concerns at issue. Based on the limited materials in the case file, I conclude that Applicant failed to carry her burden in this matter.

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
Subparagraph 1.a-1.k:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge