



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



In the matter of:)
)
) ISCR Case No. 11-11052
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had 20 delinquent debts, totaling \$30,631. All of Applicant's debts remain unaddressed. Additionally, security concerns were raised because Applicant failed to disclose her debt on her electronic Security Clearance Application (e-QIP). Applicant failed to mitigate the financial and personal conduct concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her e-QIP on April 6, 2011. On November 22, 2013, the Department of Defense issued a Statement of Reasons to Applicant detailing security concerns under the guidelines for Financial Considerations and 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 after September 1, 2006.

Applicant answered the SOR (Answer) on December 12, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to another administrative judge and scheduled for hearing on February 26, 2014. The hearing was continued on that date, and the case was reassigned to me on March 3, 2014. A notice of hearing was issued to Applicant on March 4, 2014, scheduling her hearing for March 25, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7 and Hearing Exhibit 1, which were admitted without objection. Applicant testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on April 2, 2014.

Findings of Fact

Applicant is 49 years old. She has worked for her employer for six years and seeks a security clearance in connection with her employment. She is a high school graduate. She has one child, age 20. (GE 1; Tr. 33-39.)

The Government alleged that Applicant is ineligible for a clearance because she made 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 financial concerns including 20 delinquent debts totaling \$30,631. Applicant's debts appear in credit reports entered into evidence. Applicant verified those credit reports bear her social security number. Personal Conduct security concerns arose out of Applicant's failure to disclose her SOR-listed debts on her e-QIP. Applicant admitted to SOR allegations 1.f and 1.g. She denied allegations 1.a through 1.e, 1.h through 1.t, and 2.a. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7.)

Applicant testified that the debts listed in SOR subparagraphs 1.a through 1.e, and 1.h through 1.t are not her debts. She believes that they belong to someone else with a similar name. She indicated she never had credit cards. She did not contact the creditors directly to contest the debts listed in 1.a through 1.e, and 1.h through 1.t. She never filed a fraud report or contacted the proper authorities regarding these debts. (Tr. 33-49.)

Applicant opened the delinquent account, identified in SOR subparagraph 1.f, in her name for her parents to use. Her parents were to be responsible for satisfying the bill, but they did not pay it. Applicant testified that she does not currently have the money to satisfy this account. It remains delinquent. (GE 7; Tr. 39-49.)

Applicant's debt identified in SOR subparagraph 1.g was for a medical debt that Applicant believed should have been covered by her insurance. When she received the medical bill, she asked her human resources officer to look into it. Applicant never followed up on the bill to see if it was satisfied by her insurance. It remains delinquent. (GE 4; Tr. 39-49.)

Applicant's personal financial statement, completed in February 2013, indicated that Applicant had a \$1 net remainder after she satisfied her monthly financial obligations. She identified assets of \$9,200. (GE 2.)

Applicant completed and executed her e-QIP on April 6, 2011. In response to "**Section 26. Financial Record** Answer for the last 7 years. g. Have you had bills or debts turned over to a collection agency?; m. Have you been over 180 days delinquent on any debt(s)?; n. Are you currently over 90 days delinquent on any debt(s)?" Applicant disclosed a single \$6,000 debt, which is not listed on the SOR. She failed to identify any of her SOR-listed debts. Applicant testified that her omissions were unintentional. She claimed she did not fully understand the questions on the e-QIP. English is not her first language. However, she admitted to knowledge of the debts for the past three-to-four years. (GE 1; Tr. 49-55.)

Applicant provided no 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 company procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

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 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 AG ¶ 2 describing 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 the 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. The 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.

The SOR alleges that Applicant incurred approximately 20 delinquent debts totaling \$30,631. She has not contested or otherwise addressed her delinquent accounts listed on her credit reports. She only has \$1 left after satisfying her monthly obligations, creating an inability to address her delinquent debts. She has an overall “history of not meeting financial obligations.” AG ¶¶ 19(a) and 19(c) are disqualifying.

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable, including:

(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 Appeal Board has held, "A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹ Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."² Applicant's ongoing decision not to address her debts in a meaningful manner reflects poorly on her current judgment, reliability, trustworthiness, and ability to protect classified information. Future delinquencies are likely to occur, given her \$1 monthly net remainder. She has not established that the problem is being resolved or is under control, or that she made a good-faith effort to repay her remaining delinquent accounts. While Applicant indicated the majority of the SOR-listed debt, including 1.a through 1.e, and 1.h through 1.t, are not her debts, she introduced no documented proof to substantiate the basis of her dispute and she failed to provide evidence of any action to resolve the debts. None of the mitigating conditions were sufficiently established by the record evidence with respect to those debts and the financial history of which they are symptomatic.

¹ ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

² AG ¶ 2(a)

Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline 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 condition is 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 failed to list her SOR-listed debts on her e-QIP. Despite her language difficulties, and her assertions that she did not incur the majority of the debts, she clearly knew she had debts that had not been resolved. Yet, she willfully chose not to include them on the e-QIP. This behavior indicates questionable judgment and untrustworthiness.

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 other 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.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct her falsification or concealment. She provided no information that indicates she was ill-advised in completing her SF 86. Falsifying material information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, she failed to take responsibility for her actions. She has not provided sufficient evidence to meet her burden of proof for her personal conduct.

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 pertinent 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 failed to produce sufficient documentation that her delinquent debts have been addressed or are otherwise being resolved in a responsible manner. Her veracity and personal conduct are still in question. 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 the 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.t:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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