



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



In the matter of:)
)
) ISCR Case No. 11-11290
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

04/08/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On March 22, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing. On November 27, 2012, the Department of Defense (DOD) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

On December 21, 2012, Applicant answered the SOR. On December 26, 2012, by email she elected to have her case decided on the written record.¹ On February 13, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and it was received on February 26, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on March 30, 2013.

Findings of Fact

Applicant admitted all the SOR allegations except ¶¶ 1.f and 1.p.² After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. She married in 1995 and has two children, ages 19 and 17. She has completed some college course work, but has not earned a degree. She has been employed with her current employer since May 2010. She was unemployed from June 2009 until she was hired by her present employer. Applicant's husband is employed.

Applicant admitted she owed 17 of the 19 delinquent debts alleged in the SOR, totaling approximately \$42,800. She provided documentary proof that she paid the \$53 debt alleged in SOR ¶ 1.f.³ She stated in her Answer to the SOR that she pays \$70 a month on the debt alleged in SOR ¶ 1.g (\$4,091) for a charged off credit card account. She stated she made arrangements with the creditor "months ago" to make payments of \$70 toward repayment of this debt. It has been delinquent since 2005. She provided proof of \$70 payments made in December 2012, January 2013, February 2013, and March 2013. In her interview with a Government investigator on April 11, 2011, she stated she was making payments of \$50 toward this debt, but provided no documentary proof of her actions. She also indicated in another statement that she had a significant portion of this debt paid, but did not provide documents to support her statement.⁴

Applicant indicated in her SOR Answer that she has made two payments of \$35.72 toward the debt alleged in SOR ¶ 1.a (\$250) and has an agreement with the creditor to make three more payments, the final one due on January 21, 2013, to satisfy the debt. She provided documentary proof that she made payments on November 27, 2012 and December 11, 2012. She did not provide any further proof that she made the final three payments to completely resolve the debt.⁵

¹ Item 4.

² Item 3.a.

³ Answer to SOR, Attachment A.

⁴ Answer to SOR; Answer to FORM; Item 7.

⁵ Answer to SOR, Attachment B and C.

The debts in SOR ¶¶ 1.b (\$40), 1.c (\$855), 1.d (\$107), 1.e (\$399) and 1.r (\$85) are medical debts owed to the same creditor. Applicant attributed them to an operation her son required. The accounts have been delinquent since 2009. Applicant indicated in her Answer to the SOR that she attempted to contact the creditor on December 21, 2012. She left a voice mail asking the creditor to return her call. She indicated that as of close of business December 21, 2012, she had not received a return call. She did not provide any additional information about what actions she has taken to contact the creditor or resolve the debts since then.

During her interview with the Government investigator in April 2011, Applicant stated she had no recollection of the medical debt in SOR ¶ 1.q (\$399), but intended to research it. In her Answer to the SOR on December 21, 2012, she stated that she had made arrangements to pay the bill with two payments of \$67.50 to be paid on December 26, 2012 and January 10, 2013. She failed to provide documentary proof that she made the payments.

The debt in SOR ¶ 1.h (\$70) is a delinquent telephone account. Applicant stated in her Answer to the SOR that she made arrangements to pay the account on December 24, 2012. She did not provide documentary proof that the account was paid.

The debts in SOR ¶¶ 1.i (\$3,028) 1.j (\$3,028, 1.k \$3,028, 1.l (\$5,125), 1.m (\$5,024), 1.n (\$4,927) and 1.s (\$3,141) are delinquent student loan accounts. The debt in SOR ¶ 1.s is a different creditor than her other student loan debts. In her interview with a Government investigator in April 2011, Applicant stated she believed her student loans had been deferred until 2010. She stated she received a telephone call in February 2010 from the creditor of the SOR ¶ 1.s debt, advising her that she needed to begin making payments on the loan. She stated the loan did not go into collection and she was paying \$240 a month. Applicant did not provide proof of these payments. In her Answer to the SOR, she indicated this debt was returned to the original creditor and she is researching a payment plan. Regarding the other student loan debts, she stated in her Answer to the SOR that she has an alternative payment plan for 360 payments. She was to pay \$209.98 on December 14, 2012. She stated she paid \$104.99 on December 13, 2012, and intended to make a second payment on December 24, 2012. After that, she agreed to make payments of \$96.54 per month starting on January 14, 2013. Applicant provided proof that she made a payment of \$104.99 on December 13, 2012.⁶ It appears she made a payment of \$45 to the creditor on March 14, 2013.⁷ No other documents were provided to substantiate a payment plan with the creditor or any other payments made on the debts.

The debt in SOR ¶ 1.o (\$9,526) is for a vehicle that was repossessed in 2007. Applicant indicated in her interview with a Government investigator in April 2011 that she had received a letter about the debt from a lawyer representing the creditor. She planned to speak to the lawyer so she could reach a payment agreement. In her Answer

⁶ Answer to SOR, Attachment D.

⁷ Answer to the FORM.

to the SOR, she indicated she contacted the creditor in September 2012, but was unable to reach a settlement agreement to resolve the debt. She indicated she would attempt to contact the creditor again to try and resolve the debt.

The debt in SOR ¶ 1.p is a judgment (\$800) entered in 2005. Applicant indicated in interview with the Government investigator that she had no recollection of the judgment, but she would research it. In her Answer to the SOR, she indicated she was in the process of researching who obtained the judgment. The judgment is not resolved.

In Applicant's personal financial statement provided in October 2012, she indicated her net monthly remainder after paying her bills was \$8.47. Her personal financial statement did not include payments to the creditors of her delinquent debts.⁸

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 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 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

⁸ Item 8.at 147.

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 that an 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 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has accumulated 18 delinquent debts since 2005 totaling over \$42,000 that she is unwilling or unable to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially 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;

(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 experienced a period of unemployment from June 2009 to May 2010 that was beyond her control and contributed to her financial problems. For the full application of AG ¶ 20(b), Applicant must submit evidence that she acted responsibly under the circumstances. Applicant was experiencing financial difficulties prior to her unemployment in 2009. She had a vehicle repossessed in 2007 and a credit card that became delinquent in 2005. After receiving the SOR, she paid one small medical bill. She indicated she had addressed some of the other debts, and she provided some proof of small payments on a couple of debts, but she failed to provide documents to support most of her other assertions. AG ¶ 20(b) partially applies.

There is no evidence that Applicant received financial counseling. There is insufficient evidence that she initiated good-faith efforts to repay her overdue creditors or otherwise resolve her debts. Applicant's personal financial statement shows she has less than \$10 remaining at the end of the month to pay delinquent debts. There are no clear indications that her financial problems are being resolved or under control. I find AG ¶ 20(c) and ¶ 20(d) do not apply.

Applicant disputed the judgment in SOR ¶ 1.p because she did not recognize it. She indicated she intended to research the origins of the judgment, but failed to provide evidence of actions she has taken. I find AG ¶ 20(e) 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):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 46 years old. She began having financial problems in 2005. She had a period of unemployment in 2009 that had a negative effect on her finances. She has been steadily employed since May 2010, but has not addressed most of her delinquent debts. According to her personal financial statement, she does not have sufficient income to make regular payments to resolve her delinquent debts. 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 failed to mitigate the security concerns arising under Guideline F, financial considerations.

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 B:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.s:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge