



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



In the matter of:)
)
) ISCR Case No. 11-11432
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2013

Decision

WHITE, David M., Administrative Judge:

Applicant accrued more than \$33,800 in delinquent debts over the past eight years. She made minimal progress toward their resolution, and offered insufficient evidence of an effective plan to resolve these debts or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on June 9, 2011.¹ On October 17, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

¹Item 4.

²Item 1.

Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective in the Department of Defense on September 1, 2006.

Applicant received the SOR on October 23, 2012.³ She submitted a written response on November 9, 2012, and requested that her case be decided by an administrative judge on the written record without a hearing.⁴ Department Counsel submitted the Government's written case on January 14, 2013. A complete copy of the File of Relevant Material (FORM)⁵ was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on January 22, 2013, and returned it to DOHA. She provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on March 12, 2013.

Findings of Fact

Applicant is 28 years old, and has worked for a defense contractor since August 2010. She graduated from high school at the top of her class, and as a single mother of her son who was prematurely born when she was 16. She is married, earned an Aviation Management associate's degree in 2009, and plans to finish her Aeronautical Science bachelor's degree in May 2013. She has no prior military or Federal Government service. Her husband pays child support for two children from his prior marriage. This is her first application for a security clearance, in connection with her work as her company's Assistant Facility Security Officer.⁶

In her response to the SOR, Applicant admitted the truth of all factual allegations set forth in the SOR except ¶ 1.a, which she denied. Department Counsel, while preparing the FORM, recognized that the debts alleged in SOR ¶¶ 1.h (\$22,732) and 1.m (\$23,322) are duplicate listings of the same original second mortgage debt owed to sequential creditors. Pursuant to Directive ¶ E3.1.6, Department Counsel amended the SOR to delete the allegation concerning the debt owed to the original creditor in SOR ¶ 1.h. The total due on Applicant's 14 remaining admitted delinquent debts alleged in the SOR, and supported by entries in the record credit bureau reports, is \$33,636.⁷

³Item 2.

⁴Item 3.

⁵The Government submitted seven Items in support of the SOR allegations.

⁶Items 3 and 4.

⁷FORM; Items 1, 3, 5, 6, and 7.

Applicant's admissions, including those made in response to DOHA interrogatories,⁸ are incorporated into the following findings of fact.

The delinquent debt alleged in SOR ¶ 1.a is for a credit card account, opened in October 2011, with a \$400 credit limit. As of June 2012, it was reported as a "Collection/charge off" with a balance due of \$748, having never received a first payment. Applicant was an "authorized user" on the account, which was issued to her husband as the primary cardholder. She challenged the listing on her TransUnion credit report, from which it was deleted, but did not provide any other evidence of resolution of this debt and it remains on her latest Equifax report.⁹

Applicant married her husband in 2004 at age 19. He was almost 27 at the time, and had substantial debt from a recent divorce from his first wife. They managed to repay a sufficient amount of that debt to qualify for a home mortgage loan in January 2005. They purchased a home with an "80/20" loan totaling \$113,663, requiring no down payment and using a second mortgage to pay the 20% not included in the first mortgage. That March, they also purchased a car for \$21,300. Applicant's husband was unemployed for about six months later in 2005 after returning from deployment with his Marine Corps Reserve unit. Applicant was then unemployed for 30 days during early 2006. They fell behind on a number of debts, and used their income tax refund to repay some of them. However, they could not afford their car or home loan payments, and the lenders would not renegotiate the terms. Their car was repossessed in June 2006, resulting in the \$6,671 deficiency debt alleged in SOR ¶ 1.i. The mortgage lender foreclosed on their home in August 2006, satisfying the first mortgage but not the second, which was later sold to the creditor listed in SOR ¶ 1.m.¹⁰

Applicant provided documentation of some small payments toward the credit card debt listed in SOR ¶ 1.b during 2011 and 2012, and a copy of an offer from the creditor to settle the debt for four monthly payments from November 2012 to February 2013, without additional interest, totaling \$575. Despite Department Counsel's accurate comment in the FORM that Applicant had failed to provide proof that she made any of those payments, she did not subsequently document them either.¹¹ She similarly submitted an offer from a debt collector to settle her SOR ¶ 1.m second mortgage debt for a total of \$2,332 (10% of the balance due) paid over seven months from July through December 2011, but provided no proof of having made any payments.¹²

⁸Item 5.

⁹Item 3 at 4, 9, and 32; Item 5 at 2 and 33; Item 6.

¹⁰Item 3; Item 4; Item 5; Item 7.

¹¹Item 3 at 39; Item 5 at 13-15; FORM at 6.

¹²Item 3 at 43; FORM at 5-6.

Applicant hired a credit consulting company to “repair” her credit report by aggressively challenging debts listed thereon. Several older debts were deleted as a result of their efforts, but no proof of any payment toward those debts was provided. Applicant claimed, without documentation, that she repaid the SOR ¶ 1.k (\$539) cable bill listed on her July 2011 credit report with a \$77 balance placed for collection the preceding February. Documents from her credit consulting company show that they successfully challenged that debt as being paid, and it does not appear on any subsequent credit reports.¹³

The remaining SOR-listed delinquent debts include credit cards, medical bills, a telephone bill, and a jewelry store account. They range from \$90 to \$1,244; were opened between June 2003 and January 2012; and became delinquent between March 2005 and September 2012. Applicant provided no proof of payment toward these debts, despite expressing her intention to resolve them by February 2013. She submitted a Personal Financial Statement in September 2012 reflecting a monthly surplus of \$1,381 but did not explain where that monthly surplus went or why it was not used to resolve delinquent debts. That statement included her husband’s income but did not appear to include his or their children’s living expenses, so its accuracy is questionable.¹⁴

Applicant provided letters from her supervisor, the Facility Security Officer, and her company’s Chief Accountant, describing her exemplary performance, contributions to improving their DSS facility rating, and good judgment.¹⁵ I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

¹³Item 3; Item 5; Item 6; Item 7.

¹⁴Item 3; Item 5; Item 6; Item 7.

¹⁵Item 3 at 6, 7.

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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's SOR-listed delinquent debts arose over the past eight years, and remain largely unresolved. Her financial problems were not shown to have arisen from incidents beyond her control, and she chose not to repay most of those debts despite her steady employment with a defense contractor since August 2010. She provided insufficient evidence of available income, or other assets, from which to satisfy these debts or to avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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's multiple SOR-listed delinquent debts arose over the past eight years, total more than \$33,800, and continue to date. They are frequent, recent, and arose under circumstances that involved Applicant's voluntary choices. She showed no capacity to avoid additional delinquent debt. The ongoing nature of these debts, and the recency of some, preclude a finding of unlikely recurrence. Applicant failed to demonstrate that her reliability, trustworthiness, and judgment have improved, and failed to resolve many of these debts (ten of which were under \$325) even after their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). She blamed her spouse's six-month unemployment in 2005 for creating financial problems,

but offered no evidence to corroborate that claim. Furthermore, many of the SOR-listed delinquencies are for debts incurred well after that date. Finally, her minimal effort toward resolution of these debts after obtaining full-time employment is not responsible action under the circumstances.

Applicant offered no evidence of financial counseling except hiring a company to “repair” her credit report by challenging entries, and did not establish clear indications that the problem is being resolved or is under control. She provided insufficient evidence to establish a good-faith effort to repay her overdue creditors or otherwise resolve her debts, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore inapplicable.

Applicant admitted owing all but one of the SOR-listed delinquent debts, and the denied debt was for a joint credit card in her husband’s name. The record credit reports corroborate that the SOR allegations remain accurate, with the exception of SOR ¶ 1.k. Accordingly, she failed to demonstrate mitigation under MC 20(e).

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 pertinent facts and circumstances surrounding this case. Applicant has worked to overcome many challenges in life, and made an excellent impression on her supervisors. Her efforts have greatly improved her potential to establish a record of personal and financial responsibility. She has expressed good intentions to do so.

However, Applicant is an accountable adult who is responsible for her voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her financial irresponsibility spans many years, and continues at present. It involves

delinquent debts totaling more than \$33,800, toward which she had made minimal documented payments by the close of the record. She has not demonstrated the ability or willingness to fulfill her legal obligations to her creditors. She did not show that these debts arose under circumstances that were beyond her control, or that she initiated necessary changes to prevent additional financial difficulties. She offered insufficient evidence of financial counseling, rehabilitation, or responsible conduct in other areas of her life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her financial considerations.

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.g:	Against Applicant
Subparagraphs 1.i and 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l through 1.p:	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.

DAVID M. WHITE
Administrative Judge