



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



In the matter of:)
)
) ISCR Case No. 11-12022
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

06/25/2012

Decision

HOWE, Philip S., Administrative Judge:

On November 17, 2010, Applicant submitted an electronic version of the Security Clearance Application (SF 86) (e-QIP). On December 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 received the SOR on December 30, 2011. Applicant answered the SOR in writing on January 9, 2012. Applicant requested her case be decided on the written record in lieu of a hearing.

On March 8, 2012, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on May 14, 2009. This document included an amendment to the SOR in Subparagraph 1.g, which added specific references to a November 10, 2011, credit report and stated the amount owed was \$231. The original SOR language did not list an amount..

Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on March 19, 2012. She did not file a Response to the FORM within the 30 day time allowed that would have expired on April 18, 2012.

I received the case assignment on May 14, 2012, after it was transferred from another administrative judge to whom it was assigned on May 10, 2012. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.a, 1.b, and 1.c. She admitted the other 23 allegations. (Item 4)

Applicant is 25 years old and unmarried. Applicant has been continuously employed since August 2004. Applicant claims to have held a security clearance since 2006. Her Answer states her present job is not financially based, meaning she does not handle funds. Her SF-86 lists her current job as a junior system analyst. In the future when she has the money to pay her debts, Applicant asserts in her Answer that she will pay them. (Items 4, 5)

Applicant has 26 delinquent debts totaling over \$39,000. Those debts include one tax debt, two furniture or rental companies debts, four utility company debts, two apartment lease debts, four financial institutions' debts, two student loan accounts, eight medical debts, and one account (SOR Subparagraph 1.v) that is not described. Her financial problems date from 2007 because she did not have the money to repay her debts. Applicant did not provide any evidence of a plan to resolve her delinquent debts. She has not repaid any of her debts listed in the SOR. Applicant's interrogatory answers in October 2011 claim she paid some debts and was waiting for payment arrangements on other debts. She did not provide any documents to demonstrate she paid any debt or established a repayment plan. (Items 1, 4, 6-10)

Applicant denies owing a state tax judgment or lien in the amount of \$2,588 (SOR Subparagraph 1.a). She claims the debt does not appear on her credit report and each tax year since 2004 she received tax refunds. This debt is not resolved because Applicant did not submit any documentary proof that she paid it. (Items 1, 4, 6-10)

Applicant denies owing a company \$5,777 on a judgment (SOR Subparagraph 1.b). She claims she only owes \$1,127 for attorney's fees. Applicant asserts she returned the furniture she purchased from this plaintiff and does not owe any money on that purchase. This debt is not resolved because Applicant did not submit any documentary proof that she paid it. (Items 1, 4, 6-10)

Applicant's Answer states she satisfied the credit union judgment dating from February 2008 in the amount of \$1,146 (SOR Subparagraph 1.c). The payment of this judgment, she states, was made by garnishment proceedings. This debt is not resolved because Applicant did not submit any documentary proof that she paid it. (Items 1, 4, 6-10)

The government investigator spoke with Applicant between January 28, 2011, and February 25, 2011. Applicant told the investigator that each debt would be settled, disputed, or an installment payment agreement arranged. The interrogatories signed by Applicant on October 4, 2011, state she was consulting with a debt relief program to consolidate her debts, or she was waiting for a settlement offer, or intends to settle certain debts. However, Applicant did not present any documents showing she took any action on any debt. (Items 6 and 7)

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, the administrative judge applies the guidelines 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.

According to 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. 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 concerns relating to the guideline for Financial Considerations are 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.

From 2007 to the present, Applicant accumulated 26 delinquent debts, totaling about \$39,000, which debts remain unpaid or unresolved.

AG ¶ 20 provides six conditions that could mitigate security concerns. None of them apply to Applicant:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's behavior is current and frequent. It occurred under normal circumstances that are likely to recur, meaning Applicant spent or borrowed money she did not repay because she did not have the money to resolve her debts. AG ¶ 20 (a) does not apply.

There were no conditions regarding her delinquent debts that were beyond Applicant's control and she has not acted responsibly under the circumstances. She had notice since February 2011 that the government was concerned about her finances. Yet she took no action to resolve them. AG ¶ 20 (b) does not apply.

Applicant has not received any financial counseling. There is no evidence from her that her financial problems are under any control. She merely states she will pay the debts in the future when she has the money available. AG ¶ 20 (c) does not apply.

Applicant has not made any good-faith efforts to resolve her debts in any manner. AG ¶ 20 (d) does not apply.

Applicant did not state any reasonable basis for disputing any of the debts. She did not present any documents showing she did dispute any debt on any basis. AG ¶ 20 (e) does not apply.

There is no evidence that Applicant has acquired any affluence. AG ¶ 20 (f) 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. Applicant was an adult when she incurred the debts. She has not taken any action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Applicant's inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts and has exhibited a continued lack of good judgment by failing to make payments on any of her delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial 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 under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

