



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-12131
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

04/05/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has an unpaid judgment, an unpaid account, and four collection accounts, totaling more than \$50,000, which remain unresolved. Applicant failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) on November 26, 2012, detailing security concerns under Guideline F. On December 18, 2012, Applicant answered the SOR and elected to have

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) 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.

the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated January 7, 2013. The FORM contained eight attachments (Items 1 – 8). On January 14, 2013, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response was due on February 13, 2012. No response to the FORM was received. On March 27, 2013, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she denies the debt listed in SOR 1.f (\$132,000 mortgage foreclosure) and provided documentation that the debt had been satisfied, and the creditor's lien released.² She admitted the remaining six unresolved debts. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 34-year-old employee who works for a defense contractor. She served on active duty in the U.S. Air Force from 1996 through 2000 and in the Air Force Reserves from 2000 through 2004. She receives a \$99 monthly disability check from the Department of Veterans Affairs (VA). (Item 6) Starting in 2000, she began working for a succession of DoD contractors except for the periods of July 2006 through July 2007 and September 2010 through June 2011, when she worked full-time as an owner/employee of a real estate investment firm. The down turn in the real estate market caused her to return to defense contract work. Since June 2011, she had been with her current employer and is attempting to catch up on her debts. (Item 6)

In July 2011, Applicant had a personal subject interview which discussed her financial situation. (Item 6) When self-employed in 2006 and 2007, she used three credit cards (SOR 1.d, \$5,825; SOR 1.e, \$28,276; and SOR 1.g, \$15,000) to pay her living expenses. (Item 6) In 2007, when she returned to work with a DoD contractor, she was able to bring her mortgage, utility bills, and medical bill current, but not the three credit card accounts. (Item 6) At the time of her personal subject interview, she stated she was paying her rent and meeting her living expenses. (Item 6)

For four months in 2008, Applicant provided care to her terminally ill father. From August 2008 to September 2009, she cared for and provided financial support in the amounts of \$200 to \$500 monthly for her mother. She was her mother's primary care giver. She frequently had to take time off from work to care for her mother. It is difficult for her mother to hold a job due to her mental illness, alcohol use, and epilepsy. Her mother receives some amount of social security benefits. (Item 6) In December 2009, her unemployed brother moved in with her mother. In April 2010, Applicant's niece, a full-time student, moved into her home. In November 2010, her mother was evicted from her townhouse, at which time her mother and brother moved in with her.

² In January 2011, the creditor had foreclosed on her home. (Item 6) Department Counsel (DC) concedes this debt has been resolved. I find for Applicant as to SOR 1.f.

Applicant has not had any financial counseling and has not sought the services of any debt consolidation service. (Item 6) Her October 2012 personal financial statement indicated her net monthly income was \$3,681, her net monthly expenses were \$3,106, and she was paying \$550 monthly on her debts, which left a net monthly balance of \$25.(Item 6)

In October 2012, Applicant paid \$75 on a \$22,163 credit union debt. (Item 6) Prior to August 2012, she had made a payment of an undisclosed amount on her credit union debt. (Item 6) In August 2011, the collection agency attempting to collect a bank debt offered her settlement options related to her \$28,276 debt (SOR 1.e). (Item 6) There is no documentation indicating she accepted a settlement and made payment on any such agreement.

Applicant also has an \$821 unpaid medical debt (SOR 1.a), a \$412 collection account (SOR 1. b) for a cable bill, and a \$406 collection account (SOR 1.c) for an unpaid utility bill.

In January 2012, Applicant purchased a 2008 Honda automobile with a \$1,300 down payment. The interest rate on the \$13,000 balance was 23.95%. (Item 6) There is no indication she is behind on her monthly payments on this vehicle.

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 must be considered 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 interests of 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.

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 applicant or proven by Department Counsel. . . .” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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

Adjudicative Guideline (AG) ¶18 articulates the security concerns relating to financial problems:

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.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. She has an unpaid judgment, an unpaid medical debt, and four collection accounts, which total more than \$50,000. The evidence supports application of disqualifying conditions AG ¶19.a, “inability or unwillingness to satisfy debts” and AG ¶19.c, “a history of not meeting financial obligations.”

Applicant’s family has added to her financial problems. For four months in 2008, Applicant cared for her terminally ill father. She has provided financial support for her mother and in 2009 her mother and unemployed brother moved into her home following their eviction. In 2006, the real estate market caused her financial problems and impacted on her job as owner of a real estate investment firm. These events were beyond her control and AG 20 (b)³ partially applies. However, it does not fully apply because she must have acted reasonably under the circumstances and has not.

There is insufficient evidence to conclude her actions are unlikely to recur or that she has acted reasonably in addressing her past-due obligations. She does not dispute the debts. There is no evidence she has received financial counseling, nor is there a clear indication that her financial problems are being resolved. There is no evidence of a good-faith effort to repay her creditors. I find none of the mitigating conditions fully apply.

Applicant has been aware of the security concerns over her unpaid accounts since her July 2011 interview. She has been full-time employed with her current employer since June 2011. It has been more than a year-and-a-half since she was questioned about her delinquent accounts and even the smaller of her debts remain unpaid. In January 2012, she purchased a different car. She provided documentation that she made a single \$75 payment in October 2012. The debt in SOR 1.f has been satisfied and the creditor’s lien released, but there is no documents showing she made any payment prior to the satisfaction and release. As previously stated, I find for her on this debt.

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

³ 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.

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 the facts and circumstances surrounding this case. Under these circumstances, I am not persuaded Applicant will establish repayment plans and address her delinquent accounts. She has too much outstanding debt and offered too little proof that she is satisfying her debt to conclude her debt no longer constitutes a security concern. There is no evidence that even the three smallest debts have been or are being paid.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debt. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain. Clearance is denied.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge