



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 11-12439
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns arising from her financial problems. She incurred a significant amount of medical debt for her and her children’s care. She radically changed her spending habits, submitted documentary proof of a consistent track record of debt repayment, and reduced the total amount of outstanding debt by half. Her financial situation no longer casts doubt on her current reliability, trustworthiness, and good judgment. Clearance is granted.

Statement of the Case

On May 30, 2013, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On June 23, 2013, Applicant answered the SOR, waived her right to a hearing, and requested a decision on the written record.

On September 17, 2013, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government’s proposed findings of fact, argument, and ten documentary exhibits. On November 21, 2013,

Applicant's response to the FORM (Response) was forwarded to the hearing office and I was assigned Applicant's case.¹

Findings of Fact

Applicant is a 34-year-old data management specialist for a federal contractor. She graduated high school in 1997 and is currently pursuing her undergraduate degree at a local community college. She is excelling academically. She is also married and has three children, ages 8 to 14. She volunteers with the Girl Scouts and Cub Scouts. (Gx. 4, 7; Response at 2)

Applicant has been with her current employer since 2008. Prior to finding her current job, Applicant was unemployed for about a year. This is her first application for a clearance, but she has handled sensitive information for years without issue. (Gx. 4, 7; Response at 2, 4) Her supervisor writes that Applicant is an exemplary employee, who is professional, ethical, and follows the rules and regulations. (Response at 4)

Applicant was underemployed and then unemployed in 2004, which caused her to file for bankruptcy to resolve her debts. Her debts were discharged in 2005.² Her finances stabilized until 2007, when she was again unemployed and faced an "overwhelming [amount] out of pocket medical expenses." She currently suffers from a serious illness that requires constant medical care. (Gx. 7; Response at 1) Applicant disclosed her delinquent debts on her security clearance application and fully discussed her financial problems during the ensuing background investigation. (Gx. 4, 7)

Applicant's SOR alleges about \$19,000 in past-due debts. All the debts are related to uninsured or unreimbursed medical expenses. Applicant submitted proof that she either paid or otherwise resolved 12 of the SOR debts, totaling \$8,858.³ She also submitted documentary proof of having satisfied eight additional medical-related debts, totaling \$3,196.⁴ Six other SOR debts, totaling \$700, appear to be either duplicates⁵ or were previously satisfied.⁶ Applicant's delinquent debts now total about \$9,500.

¹ Applicant's Response is 192-pages long. It was provided to the Hearing Office binder clipped to a form noting that Department Counsel had no objection to Applicant's submission. I have numbered the pages of the Response for ease of reference and, if necessary, to facilitate appellate review.

² Applicant's 2005 bankruptcy is alleged at 1.rr.

³ Response at 48, 50, 157 (1.b, \$225); 52-53, 180 (1.c, \$1,258); 60-62, 155 (1.f, \$247); 63-65, 154 (1.g, \$125); 105-107, 153 (1.v, \$331); 108-110, 151 (1.w, \$1,539); 49, 140 (1.x, \$1,057); 115-117, 150 (1.z, \$234); 132-136, 185-186 (1.ff, \$829); 140, 167-168 (1.oo, \$480); 139, 176-179 (1.pp, \$209); FORM at 5-6 (Department Counsel concedes that the \$2,324 debt listed at 1.qq was resolved prior to issuance of the SOR).

⁴ Response at 147 (\$35), 148 (\$340), 149 (\$123), 153 (\$6), 156 (\$69.15), 158 (\$779), 159 (\$5.61), 139 and 180-184 (\$1,839).

⁵ See 1.d and 1.jj (both allege a \$66 medical bill). Applicant submitted documentation showing that these debts were included as part of larger judgment that was paid. See Response at 172-180.

Applicant sought her father's advice in managing her finances. With her father's assistance, Applicant instituted a firm, written budget for her family. Applicant and her husband have changed their spending habits. For example, they longer go out to eat and spend time with their children at free, publically available recreational activities. By making these changes, Applicant now has nearly \$500 a month in discretionary income to apply towards her past-due debts and to handle unexpected medical emergencies without incurring further debt. Applicant submitted her budget, which provides for debt repayment through automatic debits from her bank account. She also submitted bank statements evidencing her and her family's improved financial habits. She has postponed much needed surgery because she does not want to add to her family's debt load. (Gx. 2, Gx. 7; Response at 1) In her Response, Applicant states in no uncertain terms that "[t]here is no amount of money in the world that would make me turn my back against the country I love and the military I work for." (Response at 2)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

⁶ Applicant denied owing the medical debts at 1.q (\$37), 1.u (\$63), 1.gg (\$318), and 1.nn (\$150). She submitted documentation with her Answer to support her claim that these debts were part of a larger judgment that she paid. She also submitted proof that she paid medical debts with similar outstanding balances to a collection agency. Additionally, Applicant's current credit report notes a \$0 balance for a previously delinquent hospital bill. See, Response at 147-159, 188-190. Due to the way these debts are sold and transferred between creditors, it is difficult to determine if it is for one of the disputed SOR debts.

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. 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 an 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The potential security concern regarding an applicant with financial problems is explained at 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.

Applicant’s accumulation of delinquent debt shortly after having her debts discharged through bankruptcy raises this concern and establishes the disqualifying conditions at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The financial considerations guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

AG ¶ 20(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;

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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's current financial problems were result of matters beyond her control. She experienced long-term underemployment and unemployment and incurred a substantial amount of medical expenses. None of the SOR debts are related to frivolous, consumer-type purchases, which was a large portion of the debt that Applicant had discharged through bankruptcy in 2005. Applicant has reduced the amount of debt alleged in the SOR by half, primarily through consistent debt repayments to her overdue creditors. She also satisfied a significant amount of medical debt not alleged in the SOR. She has sought her father's help to resolve her financial problems. With his assistance, Applicant instituted a monthly budget for her family and changed their spending habits. These positive changes have allowed Applicant to set aside about \$500 each month, which she has used to satisfy old debts and deal with unexpected medical emergencies. Although some debt remains, Applicant established that she is both willing and able to resolve her debt, and mitigated the concern that her financial problems may indicate an inability to properly safeguard classified information.⁷ AG ¶¶ 20(a) – 20(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁸ Applicant's financial problems are not related to frivolous or reckless spending or other issues raising a security concern. She has been underemployed or unemployed for long periods of time over the past ten years, and has incurred substantial medical bills for her and her children's care. She is in the process of

⁷ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan").

⁸ The non-exhaustive list of adjudicative factors are: (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.

resolving her past-due debts, as evidenced by over \$10,000 in payments towards satisfaction of old medical bills. Additionally, she has properly handled and protected sensitive information for the past five years without issue. Based on Applicant's track record of debt repayment and safeguarding sensitive information, as well as the positive steps she has taken to put her financial house in order, her past financial problems no longer cast doubt on her current reliability, trustworthiness, or good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.rr: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge