



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



In the matter of:)	
)	
)	ISCR Case No. 11-12932
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

07/09/2013

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated approximately \$39,000 of delinquent debts beginning in 2006 as a consequence of periods of unemployment and a 2012 medical condition. Included in her debts are unpaid federal income taxes. She failed to sufficiently demonstrate that she is reliable in addressing the debts. The resulting security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Statement of Case

Applicant submitted a security clearance application (SF-86) on June 14, 2011. On January 11, 2013, the Department of Defense (DoD) issued 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.

Applicant answered the SOR on February 11, 2013 (AR), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on April 23, 2013. A complete copy of the File of Relevant Material (FORM), containing nine Items, 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 May 7, 2013, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). She did not provide additional information in response to the FORM. I received the case assignment on June 25, 2013.

Findings of Fact

In her AR to the SOR, Applicant admitted all allegations except those contained in Paragraphs 1.f, 1.g, 1.j, 1.k, and 1.l. (Item 4.)

Applicant is a 55-year-old tool crib attendant for a defense contractor, where she has been employed since February 2009. She is divorced since April 2006. She was married three times. She has four adult children and one stepchild. (Items 5, 6.)

In August 2011 a security investigator interviewed Applicant about her background and delinquent accounts as part of a security clearance background investigation. Between December 2004 and February 2009, she was unemployed five different times: from December 2004 to February 2006; September 2006 to November 2006; October 2007 to April 2008; May 2008 to October 2008; and December 2008 to February 2009. She received unemployment compensation for most of those periods. From April to November 2012, she received short and long-term disability compensation while recovering from lung surgery. During that time, her family loaned her money to help pay expenses because she could not afford her bills. She repaid those loans. Applicant discussed her delinquent debts with the investigator, including most of the SOR-listed debts. (Item 6.)

During the interview, Applicant disclosed that in April 2002 she filed a Chapter 13 bankruptcy to prevent a foreclosure on her property. She attributed her financial problems at the time to a divorce and a period of unemployment. That bankruptcy was dismissed in May 2003 for undisclosed reasons. (Item 6.)

On January 4, 2013, Applicant completed and submitted a set of Interrogatories relating to specific delinquent debts and confirming the content of her August 2011 interview. With her response, she submitted some evidence regarding debts, her paid mortgage, and budget. As of January 2013, Applicant's net monthly income was \$2,510 and expenses were \$1,639, leaving \$846 remaining. Other than listing the Internal

Revenue Service (IRS) as a creditor, the budget did not mention any other debts or monies scheduled for debt repayment. (Item 6.)

Applicant's budget listed a \$4,500 debt being owed to the IRS with a monthly payment of \$25. A September 2012 statement from the IRS indicated that she owed a total of \$3,755: \$859 for 2008 income taxes; \$482 for 2009 income taxes; and \$2,015 for 2010 income taxes. The IRS statement demanded a \$286 failure-to-pay payment. There is no evidence that she paid that demand. In her 2011 interview, she stated that she was making monthly payments of \$45. (Item 6.) This IRS debt is unresolved.¹

On January 11, 2013, DoD issued an SOR, alleging 13 delinquent debts totaling \$54,786. According to June 2011, November 2012, and April 2013 credit bureau reports (CBR), the debts accumulated between 2006 and 2012. (Items 7, 8, 9.) A summary of the status of the debts is as follows:

Applicant admitted owing eight debts listed in the SOR: 1.a (\$360); 1.b (\$80); 1.c (\$637); 1.d (\$86); 1.e, (\$1,056); 1.h (\$1,199); 1.i (\$77); and 1.m (\$255). These debts total \$3,750. Applicant did not submit proof that any of them are paid or being resolved.

Applicant denied owing five debts listed in the SOR: 1.f (\$6,292); 1.g (\$1,943); 1.j (\$19,365); 1.k (\$698); and 1.l (\$22,738). All five debts are recorded in a CBR. In her August 2011 interview, Applicant discussed the \$6,292 debt owed to an apartment rental company. She said she had not yet begun making payments on it, but intended to begin payments soon. She did not recall the creditor for the \$698 debt, but said she would contact the collection agency to find out. She correctly asserted that the \$19,365 and \$22,738 debts reference the same automobile repossession debt, as noted on a CBR. (Items 7, 8, 9.) She provided no evidence that any of the four debts are not her responsibility. These debts total \$31,671 and remain unresolved.

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 (AG) list potentially disqualifying conditions and mitigating conditions, 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

¹ Applicant's outstanding debt owed to the Internal Revenue Service for unpaid income taxes for 2008, 2009, and 2010 was not included as an allegation in the SOR and will not be considered in the application of a disqualifying condition. However, said facts may be considered in determining the applicability of mitigating conditions and the whole-person analysis.

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.

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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since 2006 Applicant has been unable or unwilling to satisfy delinquent debts alleged in the SOR that total \$35,421. The evidence raises both security concerns, 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 delinquent debts began accumulating about seven years ago and continue to remain unresolved. Because she failed to provide proof that she has addressed them, she did not demonstrate that such problems are unlikely to continue or recur. Her reliability and trustworthiness in managing the debts and unpaid income taxes remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that the financial problems arose as a consequence of multiple periods of unemployment from 2004 to 2009, and a serious medical condition in 2012. Those were circumstances beyond her control. However, she did not provide documentation that she attempted to address her accruing delinquent debts or otherwise acted responsibly while they were accumulating or since she obtained her current employment more than four years ago, which evidence is necessary for the full application of AG ¶ 20(b).

Applicant did not provide evidence that she participated in credit or other financial counseling to help address her financial obligations. There is insufficient evidence in the record to establish clear indications that her delinquent debts or tax liabilities are being resolved or under control. AG ¶ 20(c) is not applicable.

Nor does the record contain evidence that Applicant has made good-faith efforts to resolve her debts. Mitigation under AG ¶ 20(d) does not apply. She did not submit evidence that she has a reasonable basis to dispute the legitimacy of any past-due debt or provide proof to substantiate the basis of the dispute. AG ¶ 20(e) has no application.

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.

According to 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 is a 55-year-old woman, who acknowledges that she is responsible for paying or resolving delinquent debts that are several years old. While she has encountered periods of unemployment, she has been steadily employed with a defense contractor since February 2009, which should have provided some financial stability until April 2012 when she encountered a medical problem for several months during which she received unemployment

compensation. She has taken few affirmative steps to resolve her numerous outstanding debts, some of which are small. Her IRS debt is about \$3,755. She acknowledged owing \$3,750 on certain delinquent debts. The remaining debts total \$31,671 and are her responsibility. She provided no evidence that she has sought financial counseling or assistance since 2006 to help manage the debts, which total \$39,176, on the budget she submitted. Her lack of diligence in resolving even small debts or seeking financial help since learning of the Government's concerns in August 2011 raises questions about her reliability and judgment. At this time, she has not established a plan or track record for resolving financial obligations.

Overall, the record evidence leaves me with 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 situation.

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.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k through 1.m:	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.

SHARI DAM
Administrative Judge