



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



In the matter of:)
)
) ISCR Case No. 11-13359
)
Applicant for Security Clearance)

Appearances

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

05/30/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On February 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 March 12, 2013, and elected to have her case decided on the written record. On March 26, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and

it was received on April 2, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on May 24, 2013.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. She married in 1999, separated in 2011, and divorced in 2012. She has three children, ages 15, 13, and 11. She has worked for her present employer, a federal contractor, since May 2011. She has been steadily employed since 2002.¹

There are 18 delinquent debts alleged in the SOR, including judgments, a charged-off car loan, consumer credit, medical bills, and phone bills, totaling approximately \$22,000. Applicant's debts also include a mortgage on a house foreclosed in 2008, in the amount of \$204,000. Applicant accumulated the delinquent debts while she was married. She attributed her financial problems to the fact she was unable to manage her money because her then-husband was managing it, and she was uninformed about their finances. She indicated they were unable to pay all of their debts due to low income and the state of the economy. They incurred medical bills due to her and her children's health issues. The family's home was foreclosed in 2008.

Applicant's divorce was final in November 2012, and she indicated that she had reached a point where she could begin to pay off her debts. Applicant did not provide any evidence regarding whether her divorce order apportioned any of the marital debts. Applicant indicated that she has learned to budget more effectively and she and her fiancé, who live together, share a checking account from which they pay their bills. She has had no financial counseling.

In Applicant's answers to interrogatories, which she signed on December 12, 2012, she stated the judgments in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d were paid, but she did not provide supporting documents. She also indicated that she had not paid or made payment arrangements on any of the other SOR debts.² She stated in her answer to the SOR for all allegations except SOR ¶ 1.o, "I admit but my debt consolidation company is handling."³ Applicant did not provide a copy of the debt consolidation contract, a list of the creditors included in the contract, or what payments have been made. She provided a one-page document that lists two creditors noted as "active creditors." It indicates that one more payment is required to one creditor, but provides no further account or transaction details. SOR ¶ 1.o alleges a collection account debt owed to the same

¹ Item 5.

² Item 6.

³ Item 4.

creditor in the amount of \$1,140. Applicant did not provide specific information about this account in either her answer or interrogatories, so nothing specific is known about her arrangements with the creditor or the debt consolidation company.⁴ She indicated in her answer to SOR ¶ 1.o that the debt alleged was “one payment away from being paid off.” No other information was provided. I find this debt is likely the same one alleged in the SOR.⁵

During Applicant’s interview with a government investigator in September 2011, she indicated she intended to resolve her financial issues following the interview, but ultimately did not.⁶

As of December 2012, Applicant reported a current net remainder of \$196.63 per month in her budget. She did not show any monies allocated to repay any of the debts listed in the SOR. She did not provide information about an established plan to repay her creditors. Applicant did not provide information about whether she receives child support payments or what amount her fiancé contributes to household expenses.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 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 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

⁴ The other debt listed on the one-page document included with Applicant’s answer does not appear to be alleged in the SOR.

⁵ Item 4.

⁶ Item 6.

⁷ Item 6.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Executive Order 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

The security concern relating to the guideline for Financial Considerations is 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 notes several conditions that could raise security concerns. The following under AG ¶ 19 are potentially applicable:

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

Applicant has 17 delinquent debts totaling approximately \$22,000 dating from at least 2008 and a mortgage foreclosure debt. She is unable or unwilling to pay her delinquent debts. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been employed full-time for the past 11 years. Her delinquent debts were incurred during her marriage. Her husband managed their finances, and she was not fully informed about their finances. They were unable to pay their bills due to low income and the state of the economy. Applicant and her children also had medical issues during this time. These may be conditions that were beyond Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant failed to provide evidence of what her and her husband's joint income was during this time and whether she had health insurance. There is no evidence she contacted her creditors and made arrangements with them to satisfy her debts. She failed to provide supporting documents to the assertions she made that the judgments alleged are paid and that all of her delinquent debts are being handled by a debt consolidation company.

I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her finances are not yet under control. Her financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies to SOR ¶ 1.o, but not to the other debts. I find that financial concerns remain despite the presence of some mitigation.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 34 years old. She experienced financial problems during her marriage. She has numerous delinquent debts that are unresolved. Applicant has failed to meet her burden of persuasion. There is insufficient evidence to conclude her finances will not be a recurring issue. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.r:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge