



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



In the matter of:)
)
) ISCR Case No. 11-13495
)
)
Applicant for Security Clearance)

Appearances

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

August 22, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had four delinquent debts totaling \$13,198, identified on the Statement of Reasons (SOR). Appellant failed to produce sufficient documentation that her debts have been addressed or are otherwise satisfied. She has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 6, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 on September 1, 2006.

Applicant answered the Statement of Reasons on March 5, 2013 (Answer). In her Answer, Applicant elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 21, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on June 3, 2013. She was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit any information within the time. The case was assigned to me on July 29, 2013.

Findings of Fact

Applicant is 27 years old. She earned a bachelor's degree in May 2010. She has been working for her current employer since January 2011. She is unmarried and has no children. (Item 5.)

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information. The SOR identified four delinquent debts totaling \$13,198. Applicant's debts appear in credit reports entered into evidence. Applicant admitted SOR allegations ¶¶ 1.a, 1.b, and 1.c. She denied SOR allegation ¶ 1.d. (Answer; Item 5, Item 7, Item 8.)

Applicant attributes her debts to periods of unemployment. She listed on her security clearance application that she was unemployed in July 2006, in September to December 2008, and again in January 2010. (Item 5.)

Her debts are as follows:

Applicant is indebted on a delinquent credit card account in the amount of \$2,519 (as alleged in SOR ¶ 1.a). This debt has been delinquent since 2009. It remains unsatisfied. (Item 5; Item 6; Item 7.)

Applicant is indebted on a delinquent credit card account in the amount of \$1,718 (as alleged in SOR ¶ 1.b). Applicant indicated that she used this credit card to pay for personal expenses and make truck payments. Applicant presented a settlement offer from the creditor and an account statement dated December 29, 2012, which showed a payment of \$171.88 to this creditor. The statement also listed "pending" payments on a monthly basis from, January 15, 2013, through November 15, 2013. However, no documentation was submitted to establish the pending payments were made successfully. It remains unsatisfied. (Item 5; Item 6; Item 7; Item 8.)

Applicant is indebted on a delinquent automobile loan in the amount of \$8,211 (as alleged in SOR ¶ 1.c). It has been past due since 2009. The vehicle was voluntarily repossessed in January 2009, but Applicant agreed that she owed the remainder after the sale of the vehicle. It remains unsatisfied. (Item 5; Item 6; Item 7; Item 8.)

Applicant is indebted on a delinquent consumer account in the amount of \$750 (as alleged in SOR ¶ 1.d). It has been past due since 2009. Applicant denied this allegation because she stated she did not recognize this account and did not know how the debt was incurred. However, this she has not contested this debt and it appears on her most recent credit report. This debt remains unsatisfied. (Answer; Item 7; Item 8.)

Applicant's personal financial statement indicated she had \$726 available after paying her monthly living expenses. She presented no evidence that she has utilized credit counseling services or professional services to help with her financial situation. (Item 6.)

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply 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. 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, the 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." The

applicant has the ultimate burden of persuasion to obtain 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 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 EO 10865 provides that adverse 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 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has had financial problems since at least 2009, when she became delinquent on several of her accounts. She has failed to present any evidence that she is addressing the debts in SOR allegations ¶¶ 1.a, 1.b, 1.c, and 1.d. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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;

(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 indicated that her financial problems were the result of being unemployed. However, she failed to show she acted responsibly once she found a new job. She has been employed with her present company since January 2011. Further, she has \$726 available after meeting her monthly expenses, but is not utilizing those funds to repay her financial obligations. Therefore, I cannot conclude that future financial delinquencies are unlikely to occur. Her financial issues are recent and ongoing, as she has failed to address the debts identified in SOR allegations ¶¶ 1.a, 1.b, 1.c, and 1.d. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) does not apply. Applicant explained that she incurred debts as a result of unemployment. This was a circumstance beyond her control. However, she identified on her security clearance application that she was unemployed in July 2006, in September to December 2008, and again in January 2010. The duration and impact of the unemployment on her financial situation is unclear. She failed to show that she has addressed her debts since accepting full-time employment in 2011. To be fully applicable AG ¶ 20(b) also requires that the individual demonstrate that she acted responsibly under the circumstances. There is no evidence that she has addressed her consumer accounts.

There is no evidence that Applicant attended financial counseling. Further, there is little indication that Applicant's four delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve her delinquent consumer debts. She presented no evidence of any recent payments or progress toward the settlement of her consumer debts. The record fails to establish that any payments have been made on her consumer debts. AG ¶ 20(d) is not applicable.

Applicant failed to present evidence to show that she was in the process of formally disputing any of her debts. AG ¶ 20(e) is inapplicable.

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 failed to address \$13,198 in delinquencies. While she has experienced periods of unemployment, she failed to demonstrate any significant efforts to repay her delinquent debt after she was hired into her current position. Accordingly, continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. Overall, 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 has not mitigated Financial Considerations security concerns.

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:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge