



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-14781
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

December 31, 2013

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on October 5, 2011. (Item 5.) On March 14, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 4; July 19; and August 7, 2013, and requested a decision by an administrative judge without a hearing. (Item 4.) Department Counsel submitted the Government’s File of Relevant Material (FORM) to Applicant on September 19, 2013. The FORM contained nine Items. Applicant acknowledged receipt of the FORM on September 30, 2013. She was given 30 days from receipt of the FORM to file objections or submit any additional documentation. Applicant elected not to submit any additional information. The case was assigned to

me on November 26, 2013. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 56 and unmarried. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this Paragraph. She also submitted additional information to support her request for a security clearance.

The SOR lists 19 delinquent debts, totaling approximately \$17,450. The existence and amount of these debts is supported by credit reports dated October 14, 2011; and January 14, 2013. (Items 9, and 8. See *also* Interrogatories submitted by Applicant. (Items 6 and 7.)) Applicant states that her credit issues are the result of some health problems, and also the result of co-signing credit accounts for her children, who subsequently were unable to pay their debts. (Item 6 at 3, 7.) Applicant indicated confusion about the medical debts in particular, stating that she was paying her medical bills and did not know who the various medical creditors were. (Item 6 at 8, Item 7.)¹ As will be shown below, Applicant is making payments on some of her debts.

The current status of the debts is as follows:

1.a. Applicant admits that she is indebted to a medical creditor for a past-due debt in the amount of \$30. Applicant states in interrogatories dated February 14, 2013, "This one I am paying sent money off." (Item 7 at 6.) In another set of interrogatories, also dated February 14, 2013, Applicant supplied copies of money orders sent to various creditors. (Item 6 at 12-15.) A money order to this creditor in this amount is not included. Based on all of the available information I find that this debt is not resolved.

1.b. Applicant admits that she is indebted to a medical creditor for a past-due debt in the amount of \$187. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.c. Applicant admits that she is indebted to a medical creditor for a past-due debt in the amount of \$95. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

¹It is acknowledged that most credit reports do not identify specific medical creditors.

1.d. Applicant admits that she is indebted to a medical creditor for a past-due debt in the amount of \$1,569. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.e. Applicant admits that she is indebted to a medical creditor for a past-due debt in the amount of \$369. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.f. Applicant admits that she was indebted to a creditor for a past-due debt in the amount of \$53. She submitted a money order receipt in this amount showing the debt was paid in February 2013. This debt is resolved.

1.g. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$1,388. She indicates that there is a payment arrangement with this creditor. (Item 6 at 12.) She also states that this is the same debt as the one set forth in 1.i. (Item 7 at 5.)² She submitted two money order receipts to this creditor from February 2013 totaling \$30. However, Applicant did not submit any other receipts or information showing that these payments are acceptable to the creditor. Based on all the available information I find that this debt is not resolved.

1.h. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$798. She indicates that there is a payment arrangement with this creditor and submitted two money order receipts from February 2013 in the total amount of \$30. However, Applicant did not submit additional receipts showing that she is continuing to make payments as arranged. Based on all the available information I find that this debt is not resolved.

1.i. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$752. She indicates that there is a payment arrangement with this creditor to pay \$50 a month for 12 months. (Item 6 at 10.) She also states that this is the same debt as the one set forth in 1.g. (See footnote 2.) Applicant also submitted one money order receipt in the amount of \$50 from February 2013. (Item 6 at 15.) However, Applicant did not submit additional receipts showing that she is continuing to make payments as arranged. Based on all the available information I find that this debt is not resolved.

1.j. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$1,870. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.k. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$1,026. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

²This appears to be incorrect. They are actually two different debts.

1.l. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$6,590. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.m. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$780. She indicates that there is a payment arrangement with this creditor to pay \$35 biweekly. (Item 6 at 7.) Applicant also submitted one money order receipt in the amount of \$35 from February 2013. (Item 6 at 16.) However, Applicant did not submit additional receipts showing that she is continuing to make payments as arranged. Based on all the available information I find that this debt is not resolved.

1.n. Applicant admits that she was indebted to a creditor for a past-due debt in the amount of \$62. Applicant states in her Answer of July 19, 2013, that she had paid this debt off. There are three money order receipts contained in Item 6 at pages 14 and 15, totaling \$60, which are for "Doctor Hospital." Based on all of the available information I find that this debt is resolved.

1.o. Applicant admits that she was indebted for a past-due debt in the amount of \$705 for telephone service. However, Applicant has also indicated that this account is fraudulent and that she has been in communication with the telephone company. (Answer of July 19, 2013; Item 6 at 8, Item 7 at 4.) This debt is not found on the most recent credit report in the record, from January 2013 (Item 8.) Based on all of the available information I find that this debt has been disputed and resolved.

1.p. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$98. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.q. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$74. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.r. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$56. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

1.s. Applicant admits that she is indebted to a creditor for a past-due debt in the amount of \$948. No evidence was submitted by Applicant showing that this debt has been paid, or that she has any plans to pay this debt. This debt is not resolved.

Applicant submitted no evidence that she has received any financial counseling. The evidence shows that she has been employed by her company since 2007. (Item 5 at Section 13.) Applicant did not complete a Personal Financial Statement as requested. (Item 7 at 9.)

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

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. (AG ¶ 2.) 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has over \$17,000 in past-due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties have been in existence since at least 2006. She has resolved very few of the debts that caused the problems, which continue to date. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant states that she has had some medical issues that have had an impact on her ability to pay her debts. However, Applicant has simply not shown sufficient evidence that she has acted responsibly under the circumstances. She

was interviewed by an investigator connected with the Defense Department in October 2011. (Item 6.) Accordingly, she has had knowledge for almost two years that her financial situation was of security concern to the Government yet five debts of less than \$100 each remain unaddressed and unresolved. Even allowing Applicant great leeway, which I do, she simply has not shown that this mitigating condition has application to her case.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” In addition, AG ¶ 20(e) states it can be mitigating where “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 has submitted evidence to show that she has made successful payment arrangements with, made payments to, or successfully disputed, three of the debts listed in the SOR. Accordingly, subparagraphs 1.f, 1.n, and 1.o are found for Applicant.

However, in conclusion, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been fully resolved. I have carefully considered the fact of Applicant’s medical issues with regards to her ability to pay her debts. I have also considered her actions earlier this year with regards to some of her debts. She simply

did not show sufficient information to support her request for a security clearance. If Applicant is able to get a firmer grasp on her finances, and shows a plan to successfully resolve her debts through evidence of continuing payments and resolution of all the debts, she may be eligible for a security clearance in the future. She is not eligible now.

Under AG ¶ 2(a)(3), her conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

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 the security concerns arising from her financial situation. Accordingly, the evidence supports denying her request for a security clearance.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	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.

WILFORD H. ROSS
Administrative Judge