



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



In the matter of:)
)
) ISCR Case No. 12-00723
)
Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On June 14, 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on August 2, 2013, and requested a hearing before an administrative judge. The case was assigned to me on September 20, 2013. The hearing was delayed due to the shutdown of the Federal Government. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 30,

2013. I convened the hearing as scheduled on December 4, 2013. The Government offered exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified and offered exhibit (AE) A. The record was held open until December 18, 2013 to allow Applicant to submit additional documents, which she did, and they were marked as AE B through F and admitted without objection.¹ DOHA received the hearing transcript (Tr.) on December 12, 2013.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a, 1.c, and 1.d. She admitted the allegations in SOR ¶¶ 1.b, and 1.e through 1.h. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 49 years old. She was married for 11 years and divorced in 1995. She has a 30-year-old son and a 28-year-old daughter. She is the legal guardian for a 19-year-old stepson, who was born to her husband while they were married and is the biological child of another woman. She also helps to care for twin 16-year-old children born to her husband, after they were divorced, who live with their aunt. All three children have the same biological mother. Applicant helps provide for them because their mother is not capable.²

Applicant's daughter lives with her. Her daughter has two children, ages eight years old and six years old. The father of the children also lives with Applicant. He does not work. Her daughter works part-time. She is unable to work full-time due to child care issues. She contributes a small amount for household expenses. Applicant does not consider the father responsible enough to take care of the children. Applicant's 19-year-old stepson lives with her and does not work or go to school. Her 30-year-old son is incarcerated. He has seven children. Applicant attempts to provide some support for these children, by sending clothes and occasionally money.³

The SOR alleges Applicant is responsible for eight delinquent debts totaling approximately \$82,266. She attributes her financial problems to being the sole provider for her family. She stated she was out of work for two months in 2008 and moved in 2011, which contributed to her financial problems.⁴

The debt in SOR ¶ 1.a (\$7,897) was for a car loan. Applicant purchased the car in 2000. It cost in the mid \$20,000 range. She paid the monthly payments. The car experienced mechanical problems. It was under warranty and the company repaired it. Applicant stated the car experienced another problem and the company refused to

¹ Department Counsel's memorandum is marked as Hearing Exhibit I.

² Tr. 64-76.

³ Tr. 64-76.

⁴ Tr. 20.

repair it. Applicant believed the car was still under warranty. When the company refused to repair it, she returned it to the dealer. She disputes the debt and does not intend on paying it. Applicant believes she had a legitimate claim because of her extended warranty. She did not provide any documents to support her dispute.⁵

The debt is SOR ¶ 1.b (\$8,812) is for unpaid rent on an apartment after Applicant vacated the premises. Applicant's apartment was burglarized. She stated that the police believed it was an "inside job" because there was no evidence of forced entry. Applicant did not give the landlord 30-days-notice that she was moving because she got a new job and had to move immediately. She believed that she owed two months' rent and stated that the landlord originally agreed. Later she learned the landlord was attempting to collect rent for the remaining term of the lease. Applicant did not pay the two months' rent. The landlord retained her security deposit, so Applicant believes she only owes one months' rent of \$1,600. She intends on resolving the debt when she receives her income tax return refund. Applicant stated she has made two payments of \$25 to the creditor. After the hearing, Applicant provided copies of two MoneyGram receipts to show she made some payments to the creditor. The document is illegible so I unable to determine when the payment was made and the amount. Presumably the receipts are for \$25 each.⁶

The debt in SOR ¶ 1.c (\$407) is a medical debt. It had been delinquent since 2009. Applicant provided proof that she paid the debt in April 2013.⁷

Applicant disputes the debt in SOR ¶ 1.d (\$1,000). In October 2013, she sent letters to the three credit bureaus disputing the debt. She does not recognize the creditor. She provided copies of the letters. After the hearing, she provided copies of new letters she sent to the credit bureaus disputing the debt. She has not checked her credit report to see if the debt's status has been updated.⁸

The debt in SOR ¶ 1.e (\$8,149) is for a loan Applicant secured in 2005. Her son owed child support and he was not working. Applicant paid it so he would not go to jail. She also used some of the money to pay her bills. Her son never reimbursed her. She was paying \$275 a month, but stopped making monthly payments. She sent the creditor a \$25 payment in October and November 2013. She is hoping she can settle the debt when she receives her income tax return refund. She also hopes to borrow money from her father.⁹

⁵ Tr. 39-43; GE 2.

⁶ Tr. 48-53; AE F.

⁷ Tr. 53-55; Answer to SOR.

⁸ Tr. 55-57; AE C; Answer to SOR.

⁹ Tr. 58-64; GE 2; AE F.

The debts in SOR ¶¶ 1.f (\$11,000) and 1.g (\$14,000) are for car loans from a credit union. Applicant made a payment plan in April 2013 with the creditor to pay \$200 a month on the debts. She has been consistently making the payments.¹⁰

Applicant obtained the loan in SOR ¶ 1.f to purchase a new vehicle in 2005 for \$34,000. She paid on the loan for three years. She fell behind on the payments when she was out of work and the car was repossessed. She obtained the loan in SOR ¶ 1.g to finance a car her fiancé purchased in 2008 for \$38,000. He made the loan payments for four years and then Applicant took over paying the loan in 2011. The car was repossessed in 2012 when she could not afford the \$634 payments.¹¹

The debt in SOR ¶ 1.h (\$31,000) is for a repossessed mobile home. Applicant purchased the home in 1998. She stopped making the payments in 2003 when the lot fee became too expensive, and she could no longer afford to make the payments. The mobile home was repossessed. She thought it was sold and did not know she owed an outstanding balance. She sent the creditor \$25 in October and November 2013. She intends to begin sending \$50 a month in the future. She stated the creditor agreed to accept this amount. She did not provide any documents to support her agreement.¹²

Applicant experienced financial problems when she lost her job in one state and relocated to a new state in 2011. She was not reimbursed for her moving expenses. Applicant earns approximately \$56,000 to \$58,000 annually. She does not have any credit cards. She has no savings or money in the bank. She has an outstanding medical bill for \$73 that she intends on paying when she receives her next paycheck. Applicant's rent is \$800. She recently purchased a 2014 car for \$22,000. She previously had a 2005 vehicle that she purchased a year ago and traded it in for the new car. The 2005 vehicle needed frequent repairs, and she was not sure how much longer it would last. She purchased the new car because she was unable to finance a loan for a used car. Applicant anticipates she should receive about \$4,000 from her 2013 income tax refund. She purchased a timeshare in 2009 or 2010. It cost \$6,000, and she pays \$132 monthly. She has never used it. She hopes to remarry one day and use it for her honeymoon. She explained she got a "really good deal on it."¹³

Applicant also has a \$31,000 dental bill. She was in a vehicle accident in 2010, and her insurance did not cover dental implants. Her father gave her a loan. She pays him \$500 a month on the debt.¹⁴

¹⁰ Tr. 20-35; AE B.

¹¹ Tr. 20-35.

¹² Tr. 35-38, 43-47; AE F.

¹³ Tr. 76-84.

¹⁴ Tr. 84-86. I have not considered Applicant's other debts for disqualifying purposes, but will consider them when analyzing the "whole-person" and her credibility.

Applicant has never received financial counseling. She stated she is paying her debts when she is able. When she has more money she will send it to her creditors. She does not have a budget, but tries not to spend beyond her means. Applicant emphasized she is the sole provider for her family. She is looking for a second job.¹⁵

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 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 on the evidence contained in the record. Likewise, I have not drawn 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 to obtain 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 the 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.

¹⁵ Tr. 87-90.

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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has six delinquent debts, totaling more than \$80,000, that she was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes 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;

(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.

AG ¶ 20(a) is not established because Applicant's debts are numerous, recent, and most are still being resolved. Applicant attributed her history of financial problems to a short period of unemployment, moving expenses, and being the sole provider for numerous members of her family. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has minimal resources to pay her numerous delinquent debts. She only recently began making \$25 payments on some large debts. She intends to use her 2013 income tax refund to pay down some other delinquent debts. She does have a payment plan to resolve two loans that she has been paying since April 2013. Applicant took little action to resolve her other debts until after she received the SOR. AG ¶ 20(b) partially applies.

Applicant does not have a budget and has not received financial counseling. She is paying \$200 a month for two loans that total approximately \$25,000. Shortly before her hearing she made \$25 payments for two months on other debts. She does not have a realistic plan for resolving her financial problems. There is not clear evidence to conclude her financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. Applicant's consistent \$200 payments for eight months on two loans and her payment of a medical debt constitute a good-faith effort to resolve those debts. AG ¶ 20(d) applies to SOR ¶¶ 1.c, 1.f, and 1.g. Applicant disputed the debt in SOR ¶ 1.e. She has contacted the credit bureau in writing twice to dispute the debt. AG ¶ 20(e) applies to this debt. Applicant also disputes the car loan in SOR ¶ 1.a, but did not provide any documentation to substantiate her dispute. AG ¶ 20 (e) does not apply to this debt.

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.

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 49 years old. She has four debts totaling approximately \$55,000 that are unresolved. She is making \$200 monthly payments on two loans totaling approximately \$25,000. She has a \$30,000 loan from her father that she is making monthly payments on. Applicant is obviously trying to take care of her immediate family and also extended family, some who live with her and others who do not. Applicant is overextended financially and has limited resources to resolve her delinquent debts. She has a history of making poor financial decisions, including purchasing a timeshare, and she has at least two repossessed vehicles and a mobile home. She did not take action on some of her delinquent debts until her security clearance became a concern and then made minimal payments. Applicant has not sought financial counseling to help her understand and initiate a realistic plan for resolving her delinquent debts. At this juncture, Applicant's finances are a security concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to deny Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge