



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



In the matter of:)	
)	
)	ISCR Case No. 12-01107
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 2, 2011. On April 11, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 for SORs issued after September 1, 2006.

On June 3, 2013, Applicant provided a notarized answer to the SOR and elected to have a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on July 11, 2013. I convened a hearing

on August 7, 2013, to consider whether it is clearly consistent with the national interest to grant a security clearance to Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through Ex. 5 and entered in the record without objection. Applicant testified, called one witness, and introduced six exhibits, which were identified and marked as Applicant's Ex. A through F and entered in the record without objection. At the conclusion of the hearing, I left the record open until close of business on August 15, 2013, so that Applicant could, if she wished, provide additional documentation. On August 15, 2013, Applicant filed a request that the record remain open for one additional week, until August 23, 2013, so that she could file additional information. Department Counsel did not object, and I granted Applicant's request. Applicant timely filed two additional documents, which I marked as Ex. G. and Ex. H and entered in the record without objection. I marked Applicant's request for an extension as Hearing Exhibit (HE) 1 and entered it in the record without objection. The record closed on August 23, 2013. DOHA received the hearing transcript (Tr.) on August 15, 2013.

Findings of Fact

The SOR contains 14 allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.n.) The financial delinquencies alleged in the SOR total approximately \$85,184. In her Answer to the SOR, Applicant admitted seven of the SOR allegations.¹ She denied the SOR allegations at ¶¶ 1.b. through 1.g and 1.n. Applicant's admissions are entered as findings of fact.

Applicant, a high school graduate, is 28 years old. She is employed as a receptionist by a government contractor, and she seeks a security clearance for the first time. (Ex. 1; Tr. 48, 52.)

When she was about 15 years old, Applicant began to cohabit with the man who is the father of her three children, aged 11, 5 and 2. The relationship existed for about 13 years. In April 2012, the relationship ended when Applicant grew concerned about her partner's instability. He paid child support for one or two months and then disappeared. Applicant is now the sole support of her three children. (Ex. A; Tr. 49-50.)

Applicant receives food stamps and state medical assistance for her children. In July 2013, she began to cohabit with another man. She and her children live with him in a house he purchased. (Tr. 51.)

Applicant testified that her financial problems began several years ago. In February 2007, she purchased a home for \$185,000 with her former boyfriend. In September 2007, she was pregnant, experienced health issues, and lost her job. The home was foreclosed upon in August or September of 2009 and sold for approximately

¹ In her Answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.m. However, she later denied the allegations at SOR ¶¶ 1.h., 1.i., and 1.l. (SOR; Ex. A; Tr. 15-16.)

\$95,000. Applicant stated that the creditor contacted her regarding a deficiency obligation, but she was unemployed and unable to pay. The SOR alleges at ¶ 1.k. that Applicant owes \$61,974 on a delinquent mortgage account with a total balance of \$103,000. This debt has not been satisfied. (Ex. 4; Tr. 52-54.)

The SOR alleges at ¶ 1.a. that Applicant is responsible for a \$586 judgment filed against her in May 2010. She acknowledged the debt and stated that she was unable to pay it. (Ex. A; Tr. 39-40.)

The SOR alleges that Applicant is responsible for the following six delinquent medical debts: ¶ 1.b. (\$214); ¶ 1.c. (\$131); ¶ 1.d. (\$215); ¶ 1.e. (\$174); ¶ 1.f. (\$90); and ¶ 1.g. (\$130). Applicant identified the debts as arising from her children's medical care. She stated that, since 2007, her children have received, under public assistance, full-coverage medical care provided by her state of residence, and she denied responsibility for the debts. She stated she had asked the medical provider to resubmit the charges alleged on the SOR to the state for reimbursement. However, she failed to provide documentation to support her statements. (Ex. A; Tr. 39, 60-62.)

The SOR alleges at ¶ 1.h. that Applicant is responsible for an unpaid collection account of \$14,510. In her answer to the SOR, Applicant admitted the debt, but in an explanatory letter written later, she denied it. She testified that she co-signed on an automobile note for her sister. When her sister did not honor the debt and make the required payments, the creditor turned to Applicant for payment. Applicant does not believe the debt is hers, and she is unable to pay it. (SOR and attached letter containing additional information; Ex. A; Tr. 40, 62-63.)

The SOR alleges at ¶ 1.i. that Applicant owes a creditor \$237 on a collection account. In her answer to the SOR, Applicant admitted the debt, but in her later explanatory letter, she denied it. At her hearing, she stated that she did not recognize the debt. The debt appears on her credit reports of March 2013 and July 2013. (Answer to SOR and attached letter containing additional information; Ex. A; Ex. 4; Ex. G; Tr. 40-41, 63.)

The SOR alleges at ¶ 1.j. that Applicant owes a creditor a debt of \$4,808, which is in charged-off status. Applicant admitted the debt, identified it as arising when her automobile was repossessed for the third time in 2010, and acknowledged that it had not been paid. (Tr. 63-65.)

The SOR alleges at ¶ 1.l. That Applicant owes a creditor \$676 on a delinquent account placed for collection. In her answer to the SOR, Applicant admitted the debt. However, she later denied the debt in a letter written after her answer to the SOR. She claimed that the creditor wrongfully overcharged her. She did not provide documentation to corroborate her claim. (SOR and attached letter containing additional information; Ex. A; Tr. 16, 44-45.)

The SOR alleges at ¶1.m. that Applicant owes a creditor \$1,382 on an account placed for collection. Applicant admitted the debt, which arose when she purchased a vacuum cleaner. The debt has not been satisfied. (Tr. 45.)

The SOR alleges at ¶ 1.n. that applicant owes a creditor a \$57 debt, which had been placed for collection. Applicant denied the debt. She stated that she had closed the account seven years ago and had no outstanding balance. The debt appears on her credit report of November 2011. (Ex. A; Ex. 5; Tr. 45.)

Applicant acknowledged that none of the debts alleged on the SOR had been satisfied. She stated that she and her current boyfriend, who recently filed for bankruptcy, had entered into a debt repayment plan approximately two months before her hearing. They paid \$600 down, and the firm they contracted with was using her current credit report to identify her creditors. No creditors had been paid as of the date of her hearing. Applicant failed to provide a list of creditors on her payment plan. (Ex. D; Ex. G; Tr. 54-59.)

Applicant's witness testified that Applicant was a devoted mother to her children. The witness, Applicant's sister, stated that she had observed Applicant at work and could see that she was a valued employee. Applicant provided three letters of character reference which attested to her trustworthiness and strong work ethic. One of her coworkers stated that Applicant was a valued member of their professional team. (Ex. E; Ex. F; Ex. G; Tr. 88-98.)

Applicant provided a current financial statement. Her monthly take-home pay is approximately \$1,700. Her boyfriend's monthly take-home pay is approximately \$2,500 a month. Applicant pays her boyfriend \$500 a month to help pay his mortgage. In addition to the food stamps she receives, Applicant spends about \$150 on groceries each month. She pays about \$823 each month to maintain a 2012 automobile her boyfriend purchased for her. Her daycare expenses for her children are \$600 each month. Applicant also pays the monthly cable bill of \$68. Applicant's monthly expenses total approximately \$2,141. She testified that her boyfriend helps her with her gasoline expenses and by purchasing clothing and school supplies for her children. She stated she believes she has between \$300 and \$400 each month to use to pay her delinquent debts. The record does not reflect that Applicant has had financial credit counseling. (Ex. 3; Tr. 66-77.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant

Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 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.

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. 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. For several years, Applicant accumulated substantial delinquent debt and was unable or unwilling to pay her creditors. This 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. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant has a history of financial difficulties and inability to satisfy her financial responsibilities. Her substantial financial delinquencies are current and ongoing, and her attempts to resolve them occurred recently, when she and her current boyfriend contracted with a debt consolidation firm. To date, none of the debts on the SOR have been resolved.

Applicant has had a difficult life. She took on adult responsibilities at an early age, and her first boyfriend's irresponsibility has caused her and their three children to live in difficult circumstances. However, her current expenditures exceed her income, and it is not clear that she will be able to attain financial stability, even with the assistance of her new boyfriend.

Applicant merits some credit for her recent attempt to consolidate and pay her delinquent debts. However, what is missing from Applicant's record is consistent payment of her debts over time. She has not established a track record that demonstrates that she can be relied upon to allocate her limited resources to satisfy her many substantial financial delinquencies.

Applicant's financial delinquencies occurred under circumstances that are likely to recur. She stated that a number of small medical debts were not hers, but she failed to provide documentation to corroborate her assertion that the debts would be paid on her behalf by the state. While legally responsible for her sister's debt, she denied responsibility for it. She has not had financial credit counseling, and she lacks a clear and timely strategy for resolving her delinquent debts.

Accordingly, I conclude that while AG ¶ 20(b) has partial applicability in this case, AG ¶¶ 20(a), 20(c), 20(d) and 20(e) do not apply in mitigation to the facts of this case.

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. Applicant's witness testified that Applicant was a good mother. Her coworker and friends consider her to be reliable and a hard worker.

Applicant's financial problems began several years ago and are ongoing. Her efforts to address her financial delinquencies are recent. She does not have a reliable history of timely and consistent payment of her financial obligations, and she has not sought credit counseling.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as her eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial delinquencies.

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

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.

Joan Caton Anthony
Administrative Judge