



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



In the matter of:)	
)	
)	ISCR Case: 12-02371
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

04/14/2014

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated approximately \$26,000 of delinquent debt since 2007. She failed to provide evidence that she made a good-faith effort to resolve, pay, or arrange payments on any of the 15 delinquent debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On December 12, 2011, Applicant submitted a security clearance application (SF-86) for a periodic review. On July 16, 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on August 13, 2013 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on October 23, 2013. A complete copy of the File of Relevant Material (FORM), containing seven Items, was provided to Applicant on November 19, 2013, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on December 2, 2013, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). She did not provide additional information in response to the FORM within the 30-day period. DOHA assigned the case to me on March 13, 2014.

Findings of Fact

In her Answer to the SOR, Applicant admitted all 15 allegations contained in the SOR. (Item 2.)

Applicant is a 45-year-old. She has been employed as a clerk for a defense contractor since November 2006. Prior to this position she worked for a private company for more than a year. She was unemployed from July 2004 to April 2005.

On December 12, 2011, Applicant submitted a SF-86. On May 18, 2013, a security investigator interviewed Applicant about her delinquent debts. During the interview Applicant did not recognize many of the debts listed on her credit report, but did not deny them. She explained that she was unable to pay them after she became unemployed from July 2004 to April 2005. Some companies would not accept less than minimum payments. Subsequently, she stopped paying her debts because she did not have enough money. She intended to review her credit report to determine if any of the accounts listed were not her accounts. (Item 5.)

In her Answer, Applicant explained that after she started working at her current position, she purchased a house in March 2007. Subsequent to moving into the house, she realized that she could not continue to pay all of her debts. The credit card balances started to increase with penalties and interest. Because she did not have enough money, she decided to stop paying old debts, so that she could maintain living expenses. "To make a long story short, I fell short, I fell down and I fell on hard times when it came to my financial responsibilities." She stated that she is maintaining her financial responsibilities. (Item 2.)

Based on credit bureau reports (CBR), dated December 2011 and April 2013, the SOR alleged 15 delinquent debts totaling about \$26,000, and dating back to May 2007. (Item 6) The debts range in amounts from \$86 to \$7,907. None of the debts are paid or resolved. She did not submit evidence that she contacted any creditors, sought advice

through a debt consolidation company, worked out a repayment plan, or disputed any debt.

Applicant provided a copy of her budget. Her annual salary is over \$45,000. Her April 2013 net monthly income is listed as \$3,751 with living expenses of \$1,067. She also pays \$1,408 toward ongoing debts that include a mortgage payment of \$724 and car loan payment of \$605. She has a surplus of approximately \$63 at the end of the month. (Item 5 at 9.) Applicant did not submit evidence of participation in financial, credit, or budget counseling.

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 describing her judgment, trustworthiness, integrity, or reliability.

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Since 2007 Applicant has been accumulating delinquent debts that she has been unable or unwilling to satisfy. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial difficulties:

(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's delinquent debts began accumulating in May 2007, all of which continue to date. Because she has failed to address the debts, she did not demonstrate that such problems are unlikely to continue or recur. Her reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that her financial problems arose because she was unemployed from July 2004 to April 2005. Those were circumstances beyond her control. However, she failed to provide evidence that she acted responsibly under the circumstances or that she attempted to resolve her debts during the past seven years that she has been employed with a defense contractor. AG ¶ 20(b) has limited application.

Applicant did not provide evidence that she participated in credit or financial counseling. There is no evidence that Applicant has any plan to resolve her debts. Hence, AG ¶ 20(c) has no application, because there are not clear indications that the problems are under control.

Applicant did not submit proof that she made a good-faith effort to resolve any debt, including one for \$86. AG ¶ 20(d) does not apply.

There is no evidence that Applicant had a reasonable basis to dispute any delinquent debt and successfully resolved it through the dispute process. AG ¶ 20(e) has no application.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 45-year-old employee of a defense contractor where she has worked for the past seven years. In December 2011 she submitted a SF 86 and disclosed delinquent debts. In January 2012 an investigator spoke to her about those debts. She told the investigator she would review her credit problems. In July 2013 the Government issued a SOR informing her that delinquent financial obligations were jeopardizing her security clearance and employment. In October 2013 the Government sent her the FORM, arguing that her security clearance should be revoked. She had an opportunity to respond to the FORM, but did not. For almost two years, she has been on notice that her unresolved delinquent debts would result in adverse consequences for her. Yet, she took no action to resolve any of the debts, including an \$86 one.

Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.o:	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.

SHARI DAM
Administrative Judge