



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



In the matter of:)
)
) ISCR Case No. 12-03128
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Despite having the means to do so, Applicant has not resolved any of the delinquent debts alleged in the SOR. Clearance is denied.

Statement of the Case

On August 23, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing convened on December 10, 2013, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through E, without objection. After the hearing, Applicant timely submitted AE F, which I admitted without objection.² I received the transcript (Tr.) on December 30, 2013.

Procedural Issues

Applicant received less than 15 days written notice of the time and place of the hearing as required under Directive ¶ E.3.1.8. Applicant waived the notice requirement, electing to proceed with the hearing as scheduled.³

Findings of Fact

Applicant, 40, has worked in an information technology position for a federal contractor since September 2011. Initially hired with a \$90,000 annual salary, Applicant has since received two raises and now earns \$94,000 a year. Applicant is performing well in her current position and was given supervisory responsibilities six months after she started her job. Applicant is a single mother of one child, age 9, from a previous relationship. She does not receive any financial assistance from the child's father.⁴

The SOR alleges and Applicant admits that she owes \$12,000 on 14 delinquent accounts. Applicant's financial problems were caused by periods of unemployment, totaling 14 months, between September 2005 and April 2011. Applicant testified that she was doing well financially until about 2007, when she lost her job. Although she worked a series of short contract jobs, she did not regain steady, full-time employment until September 2011. Without steady employment and no child support from her child's father, Applicant fell deeper in debt. In 2008, she decided to relocate and regroup financially by living with family. In doing so, Applicant paid \$12,600 in non-SOR debts before starting her current job, including a \$7,600 credit card debt and a \$5,000 tax debt.⁵ She also rehabilitated her student loan, which was 18 months past due. By August 2012, she was able to purchase a home. Her mortgage and other recurring bills are current. Applicant has also amassed \$22,000 in cash savings and another \$20,000 in retirement savings.⁶

² Department Counsel's e-mail regarding the admissibility of the AE F is included in the record as Hearing Exhibit (HE) 1.

³ Tr. 7.

⁴ Tr. 14, 17-18, 20-21; GE 1; AE A, F.

⁵ It is unclear from the record if the tax liability was a federal or state obligation.

⁶ Tr. 14-19, 22-23, 34-36; GE 1; AE B.

In August 2012, Applicant married. Her husband and his 16-year-old-twins moved into Applicant's home and she became the primary source of income for the family. In the aftermath of his unexpected abandonment of the marriage in July 2013, Applicant filed for divorce.⁷

Currently, all of the SOR debts remain unresolved. She disputes two of the accounts, but has not taken any steps to formally dispute the accounts with the creditors or the reporting agencies. After researching the best way to resolve her delinquent debt, Applicant decided to build her savings with the intent to offer settlements to her creditors. Now, with a substantial amount in the coffers, she is hesitant to make any settlement offers until she knows how her savings will be affected by the divorce. She believes that her husband may be entitled to \$5,000. In addition to the unknown cost of her divorce, Applicant and her child have experienced unexpected medical issues in the last year that have resulted in at least \$2,000 in out-of-pocket medical expenses. Because she is in the midst of medical treatment, Applicant expects to receive additional medical bills. Otherwise, Applicant is financially stable; she has approximately \$1,500 to \$2,000 in disposable income each month.⁸

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 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.

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,

⁷ Tr. 17-18, 21-31-33; GE 2.

⁸ Tr. 18-20, 26-31, 36; GE 2; AE C.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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.

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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁹ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges and Applicant admits that she owes \$12,000 in delinquent debts.¹⁰ The debts are also substantiated by Applicant’s credit reports.¹¹ The record supports a finding that Applicant has a history of financial problems resulting in unresolved delinquent debts. Based on her current finances, she has demonstrated an unwillingness to repay her delinquent debts. Accordingly, financial considerations disqualifying conditions 19(a)¹² and (c)¹³ apply. In many cases, the history of underemployment that contributed to Applicant’s financial hardships, her impressive financial recovery, and non-SOR debt repayment would carry significant weight in

⁹ AG ¶ 18.

¹⁰ Answer.

¹¹ GE 3 – 4.

¹² Applicant has an “inability or unwillingness to satisfy debts.”

¹³ Applicant has “a history of not meeting financial obligations.”

mitigating the security concerns raised by her financial history.¹⁴ In this case, however, this favorable information does not outweigh Applicant's unwillingness to repay the delinquent debts alleged in the SOR. Despite having sufficient disposable income and \$42,000 in assets to draw upon to resolve at least some of her delinquent debts, Applicant has chosen not to pay any of the debts alleged in the SOR. Twelve of the 14 debts alleged are under \$1,000. Of those twelve debts, six are under \$250. While Applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously, she must act responsibly given her circumstances, develop a reasonable plan for repayment, and take some steps to execute the plan.¹⁵ She has not done so.

Applicant's unwillingness to resolve even the smallest of the SOR debts, casts doubts about her current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant expended sufficient effort to rehabilitate her finances so that she could purchase a home. She has not applied the same care and effort to eliminating the financial concerns that make her an unacceptable security risk. Accordingly, her request for access to classified information is denied.

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, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge

¹⁴ See, AG ¶¶ 20(b) and (d).

¹⁵ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).