



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



In the matter of:)
)
-----) ISCR Case No. 12-03304
)
Applicant for Security Clearance)

Appearances

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

01/27/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns related to Guideline F. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On June 28, 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.

In an undated response, Applicant admitted the eight allegations raised in the SOR with brief comment. She also requested a decision without a hearing. Counsel for DOD prepared a Form of Relevant Material (FORM) containing six attachments to support the Government's position in this matter. Applicant did not submit a response or any additional information within the specified time period following her receipt of the

FORM. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 21, 2013. I have thoroughly reviewed the FORM and other case file materials. Based on the materials submitted, I find that Applicant failed to meet her burden in mitigating financial considerations security concerns. Clearance is denied.

Findings of Fact

Applicant is a 40-year-old over-the-road truck driver who has worked for the same employer since September 2011. She was employed full-time from July 2003 to September 2005 in trucking, then did not work from September 2004 through July 2006 while she attended school. From July 2006 to September 2009, Applicant worked full-time as a self-employed hair stylist. She ultimately closed her business when it proved to be unprofitable. In September 2009, she returned to trucking. Applicant has earned a one-year degree from a technical institution. She is married and has a stepchild.

The June 2013 SOR alleges eight debts, representing approximately \$18,300 in delinquent obligations. Applicant fully admits the owed balances noted at ¶¶ 1.b (\$465, dating from at least March 2008), 1.c (\$330, dating from at least January 2007), 1.d (\$370, dating from at least February 2007), 1.f (\$1,464, dating from at least February 2010), and 1.g (\$871, dating from at least July 2009).

Applicant wrote that the debt noted at ¶ 1.a (\$12,824), a judgment filed in September 2012, had been reduced to \$8,374.72 through monthly payments of \$400 made at unspecified times. Her documentary evidence reflects the balance was reduced to \$9,974.72 (FORM, Item 4, page 3, Letter of Apr. 16, 2013). There is no explanation as to how this sum was reduced. That same documentary evidence reflects that the account was then currently past due, specifying that the underlying payment agreement thus could be cancelled at any time and the full balance become due in full. A handwritten notation on the letter states that a payment of \$400 was made on April 20, 2013, but no documentary evidence of that payment was attached. The current status of this obligation and the repayment agreement is unknown.

The school-related debt noted in the SOR at ¶ 1.e (\$1,900) is reflected in a June 2012 credit report as having been delinquent since February 2010. It is shown as still owed in a June 2013 credit report (FORM, Item 5). Applicant stated in her answer to the SOR that she had begun making payments on this debt, but no evidence was offered substantiating her assertion.

Applicant wrote that she had paid the debt listed in the SOR at ¶ 1.h (\$74) in February 2012. A 2012 credit reports shows it became delinquent in December 2010. Applicant introduced no documentary evidence proving that this obligation was paid.

The FORM reiterated the delinquent debts noted in the SOR. It also noted Applicant's responses to the SOR allegations. Evidentiary deficiencies regarding those debts were highlighted. No additional information or supporting documentation, however, was timely submitted in response to the FORM. In addition, there is no

indication as to whether Applicant received financial counseling that has aided her in addressing her finances.

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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has multiple delinquent debts. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

The debts at issue are multiple in number, vague in origin, and largely unaddressed, obviating application of AG ¶ 20(a). Moreover, it is noted that Applicant's hair stylist business, which she owned from 2006 through 2009, failed. However, there

is insufficient record evidence to link her 2009 business failure to the debts at issue or to show that, in the face of a declining business, she acted responsibly. Therefore, AG ¶ 20(b) does not apply. Further, there is no evidence she received financial counseling, obviating application of AG ¶ 20(c).

In addition, although there appears to be some progress on the debt noted at ¶ 1.a, there is no documentation showing how it was made, as opposed to negotiated or settled; nor is there documentation indicating whether the past-due status mentioned in Applicant's documentation was eventually rehabilitated or led to cancellation of the repayment plan. Without more, it cannot be discerned whether AG ¶ 20(d) applies. Finally, to the extent Applicant admits all SOR allegations and provided no documentary evidence of formally disputing any of the accounts at issue, AG ¶ 20(e) does not apply.

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). 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 limited facts and circumstances noted in this case. I incorporate my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, others may have warranted additional comment.

Applicant is a 40-year-old truck driver who has worked for the same employer since September 2011. She was employed full-time from July 2003 to September 2005 in trucking, took a break from work to attend school from September 2005 through July 2006, then ran her own business until it failed in September 2009. Applicant then returned to trucking. She has a one-year technical degree and is married.

The main concern in this case is related to eight delinquent debts. Seven of the debts became delinquent between early 2007 and 2010, and a significant judgment was entered against Applicant in 2012. Applicant does not deny responsibility for any of the obligations. She failed to provide any significant documentary evidence regarding her efforts, if any, regarding these obligations except for a letter noting that the adverse judgment (SOR ¶ 1.a) was reduced through what appears to have been a debt repayment plan. Her evidence in that matter, however, also notes that she was then past due on the judgment's repayment plan, leaving the plan's current status unclear. Moreover, Applicant described no nexus between her debts and any periods in her life in which her financial situation was seriously beyond her control, nor did she depict any reasonable efforts that she might have taken to keep her obligations timely. Further, there is no documentary evidence showing that she received financial counseling.

Finally, while there is no reason to doubt Applicant's honesty in her proffered materials, her submissions are deficient as substantive evidence. Based on the limited materials in the case file, I conclude that Applicant failed to carry her burden in this matter. Consequently, I conclude Applicant failed to mitigate security concerns arising under Guideline F.

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-1.h:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge