



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06995

Appearances

For Government: Eric Borgstrom, Esquire
For Applicant: *Pro se*

03/29/2017

Decision

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

Statement of the Case

On April 11, 2016, 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 a letter dated August 18, 2016, Applicant admitted five of the seven allegations contained in the SOR, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on September 7, 2016. DOHA issued a notice of hearing on September 8, 2016, scheduling the hearing for September 28, 2016. That hearing was cancelled due to Applicant's health. A notice was then issued on October 27, 2016, setting the hearing for November 14, 2016. The hearing was convened as scheduled.

The Government offered five documents, accepted without objection as exhibits (Exs.) 1-5. Applicant offered testimony and one document, accepted as Ex. A. She was given until November 24, 2016, to submit any additional materials. On November 15, 2016, the Government forwarded from Applicant three additional documents, which I accepted into the record as Exs. B-D. On November 22, 2016, the transcript of the proceeding (Tr.) was received. The record was closed on November 24, 2016.

Findings of Fact

Applicant is a 32-year-old security worker who has worked for the same defense contractor in some capacity since 2010. Due to the security concerns giving rise to this action, she was taken off a contract utilizing her security talents in June 2016. Pending resolution of this process, she is working as a scheduler. She has been earning \$20.37 an hour, although her scheduling position has a reduced work week of 30 hours. Applicant has a secondary job providing event security, but it has not needed supplemental workers in two years. She has a high school diploma and a certificate in law enforcement. Presently single, she is the mother of a pre-teen child.

Since graduating from high school, Applicant has had financial difficulties. (Tr. 29) From September 2007 to May 2009, Applicant was unemployed for about a year while recuperating from work-related back injuries, then away from work during a difficult pregnancy. (Tr. 36-37). Her child was born in 2008 (Tr. 47) At some points during this period, she received workers compensation and unemployment insurance. It was then she decided to switch careers from nursing assistance, making \$9-\$10 an hour, to security. By the time she started her present work in 2010, she had acquired debt. She recently missed three days from work due to a September 2016 surgery.

The SOR was issued on April 11, 2016. On or about April, 21, 2016, before she was taken off her security position and moved to reduced hours in June 2016, Applicant created a repayment plan with a law firm. (Tr. 26-28; SOR Response (attachment)) Under this plan, she would make payments of \$317.81 on May 5, 2016, and May 20, 2016, then once a month thereafter. (SOR Response (attachment)) The plan incorporated all debts at issue except for the one noted at 1.a. (Tr. 25) Having been subject to a scam in the past, she preferred having her debt repayment managed in this way.¹ Payments on the plan were never commenced. With her hours reduced in June 2016, she has not been able to afford payments on that plan.²

At issue in the SOR are seven delinquent debts, reflected at allegations 1.a-1.g.:
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¹ Applicant noted this experience at Tr. 25; *see also* Tr. 30. In addition, at Ex. C, she showed a payment of \$779.39 from May 2016 which she had thought was to be applied to the account at 1.b, but when she "found out it was a scam place [she] closed the account. And got with the [law firm] to help. . . ."

² It is unclear why no payments were made in May 2016.

1.a – Adverse judgment filed in 2010 - \$43,739 – Unpaid. This debt reflects the consolidation of three loans from about 2002-2003, after Applicant graduated from high school. (Tr. 45-46) The loans were for a car she acquired, and notes on which she may have co-signed for a boyfriend's car and motorcycle. (Tr. 46-47) The loans were delinquent by 2008. She did not contact the bank at the time, but she unsuccessfully encouraged the boyfriend to make payments on the vehicles.

The documented evidence provided as the basis for this debt is in conflict. (Tr. 49-54) Ex. 2 is a March 2016 Equifax credit report showing the judgment, but does not indicate the status type of whether it has been satisfied. Ex. 3 is a three-in-one credit summary from November 2014 that shows the judgment as unsatisfied, as culled from Equifax, TransUnion, and Experian. Ex. 5, an Equifax credit report from September 2016, shows the account as satisfied, but as of the date of filing (10/2010). Applicant did not go to court when the judgment was obtained. (Tr. 50) She admits she has not made any payments on these loans or the consolidated loan. (Tr. 49-50) Applicant "knew [the debt] was out there, but [she] didn't know about the judgment." (Tr. 54) She provided no documentary evidence indicating she had been a co-signer on her boyfriend's vehicular loans. (Tr. 51) She believes the motorcycle was wrecked and the cars repossessed.

Before the hearing, Applicant contacted the collection attorney for the creditor at issue. She was told to gather certain information and return it within 30 days.³ (Tr. 52, 54, 59-60; Ex. A (Plaintiff's First Set of Interrogatories in Aid of Execution)) In late October 2016, she was send a packet of financial information to complete and return within 30 days. (Tr. 59) Despite time to do so, Applicant did not submit a copy of the completed packet for consideration. She provided no documentation from the creditor, its collection agent, or the court that this debt has been satisfied.

1.b – Collection account - \$653 - Unpaid. Applicant provided documentation indicating a debit card purchase for \$779.39 she believes paid this debt, but there is insufficient nexus to establish this link or to conclude this debt was paid. (Tr. 25-26; Exs. C-D)

1.c – Telecommunications collection - \$1,191. Unpaid. This account became delinquent in 2014. It was shared with a family member. Applicant included this on her repayment plan, but has not otherwise contacted the company. (Tr. 41)

1.d – Telecommunications collection - \$538. Unpaid. Delinquent in 2012, Applicant has not contacted this entity, but it is on her repayment plan.

1.e – Cable bill collection - \$242. Unpaid – Denied. Applicant had service with this company before 2009. She has telephoned this entity, but it had no record of the debt. (Tr. 42-43) She denies responsibility for the balance.

³ The source of the financial questionnaire packet noted as Plaintiff's First Set of Interrogatories is the law firm representing the collection action.

1.f – Telecommunications collection - \$217. Unpaid – Denied. This debt also appears to have arisen in or before 2009. Applicant telephoned this entity, but it had no record of the debt. (Tr. 43-44) She denies responsibility for the balance.

1.g – Insurance collection - \$107. Unpaid. This admitted debt is from about 14 years ago. It is also in the stalled repayment plan. (Tr. 44-45)

Applicant is current on her rent, but she is behind on “a few bills,” including an outstanding balance with her power company that has been turned over for collection in the amount of \$8,700. (Tr. 35) That debt is currently in the stalled repayment plan. For a time, her balance was under a repayment plan she could not sustain. (Tr. 38) She expects her next tax refund will be applied to the judgment noted at 1.a. She has no 401(k) account. She has received financial counseling and utilizes a budget. (Tr. 61)

A letter from Applicant’s director of administration and assistant facility security officer was presented. (Ex. B) Applicant is noted as a valuable addition to the company. Applicant’s absence from her regular work has been deeply felt. Applicant is considered well-organized, trustworthy, reliable, and a fine interpersonal communicator.

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.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include 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.

Although she denied responsibility for two debts amounting to under \$400, Applicant admitted to over \$46,200 in delinquent debts. This is 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 these finance-related security concerns:

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) 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 was unemployed for about a year starting in September 2007 after injuring her back, then remained away from work due to a difficult pregnancy in 2008. She returned to the workforce in May 2009. She was receiving varying levels of workers compensation and unemployment during this time. Little is known of her efforts to responsibly meet her financial issues during that time.

In the more recent past, she was about to initiate a repayment plan developed in April 2016, when this process required her to be transferred to a job providing for less than full-time hourly work in June 2016. It is unclear why she could not make payments in May 2016. However, this frustrated her ability to pay on her repayment plan. Although she showed no efforts to seek another part-time supplemental position or find some other solution for generating additional income to fill her time, AG ¶ 20(b) applies in part.

The documentary evidence of record indicates a degree of conflict, regarding one debt. Applicant admits she owes \$43,739 for an adverse judgment. The fact the credit reports have varying information on the status of the judgment, and given Applicant is working with the attorney representing the plaintiff's interests in the matter, she is in the position to obtain and offer evidence indicating whether any progress has been made on this balance or if the matter is resolved. No related documentation was provided.

Further, although the rest of the delinquent debts at issue were incorporated into a repayment plan, Applicant provided no documentary evidence showing any payments were initiated on the plan. Consequently, no progress has been shown on those debts, except the repayment plan, which remains unrevised despite her changed circumstances. However, Applicant has received financial counseling. That, and her yet unimplemented repayment plan with a law firm, raise AG ¶ 20(c)-(d) in part.

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 all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some factors from AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 32-year-old woman who has been a security worker since 2010, earning about \$20.37 an hour. She is presently working as a scheduler on a less than full-time basis pending the outcome of this process. She has not had part-time work in two years, despite her presently abbreviated work week and reduced income. She has a high school diploma and a law enforcement certificate. She has one pre-teen child.

Since school, Applicant has had financial difficulties. From September 2007 to May 2009, Applicant received workers compensation and unemployment insurance at various times after injuring her back, then before and after having her child in 2008. Some debts from this period remain at issue.

On or about April 21, 2016, about 10 days after the issuance of the SOR, Applicant signed a debt resolution agreement with a law firm to address all but the adverse judgment now at issue. Payments were to start in early May 2016. None were made. At some point in June 2016, her job was changed and she started a less than full-time schedule. She cites to that as her reason for not fully implementing the plan, although it fails to address why no payments were made in May 2016.

Applicant admits her income is limited. Any monthly net remainder is scant. There is no documentary evidence indicating efforts were exerted and completed on the debts at issue, including completion of the financial informational packet she received in October 2016 for completion within 30 days. Evidence from the issuer of that packet or the court was not forthcoming regarding the status of the related judgment. Applicant failed to provide sufficient documentation indicating what effort, if any, has been taken toward the resolution of these debts except for the uninitiated debt resolution plan.

This process does not require an applicant to address all her obligations or satisfy all of her debts. It does expect that an applicant methodically devise a manageable and realistic strategy for addressing her debts. Documentary evidence is then needed to show that such a plan has been successfully implemented. Here, Applicant failed in her burden. Without such documentary evidence, financial considerations security concerns remain unmitigated.

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.g:

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