



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



In the matter of:)	
)	
)	ISCR Case No. 14-03262
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

02/29/2016

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on March 27, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on August 29, 2014, 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; DOD 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), implemented on September 1, 2006.

Applicant received the SOR on October 5, 2014. She submitted an undated, notarized, written response to the SOR allegations, and she requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on September 3, 2015. Applicant received the FORM on September 29, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on February 22, 2016. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1.

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 38 years old, works as a logistics supply engineer for a DOD contractor. She began her current employment in October 2011. Applicant was unemployed from April 2009 until October 2011 and from March 2008 until March 2009. She worked as a federal contractor from August 2005 until March 2008, when her husband was transferred by the military. The property management job she obtained in March 2008 ended a month later when she refused her supervisor's request to provide preferential treatment to a tenant, as Applicant believed the request violated fair housing laws.¹

Applicant married her husband in 1999. They have a 15-year-old daughter. Applicant has two sons, ages 23 and 20, and her husband has two daughters, ages 21 and 20. Applicant's husband served in the United States military for many years. His current employment status is unknown.²

Since her marriage, Applicant has lived in several states because of her husband's duty assignments in the military. When they moved in 2008, she encountered difficulty finding a job around his duty station because of the economic downturn. When he transferred two years later, she eventually found her current employment.³

¹Item 4; Item 6.

²Item 3; Item 4.

³Item 4; Item 6.

The SOR identifies 10 debts, including \$22,911 of unpaid debts and \$1,190 of past due payments on an automobile loan of \$25,316. The source of these debts is the credit reports dated April 10, 2013 and May 27, 2014. These credit reports reflect that Applicant paid a collection account in 2009 and a second collection account in 2012. The SOR debts identified in allegations 1.g through 1.j are not listed on the 2014 credit report for unexplained reasons. During her personal subject interview, Applicant advised that she paid the debt in allegation 1.j (\$148). Because this debt is no longer on her credit report, she is credited with paying the debt.⁴

In her response to the SOR, Applicant advised she had brought her automobile loan current (allegation 1.a) and that she was paying her obligation monthly. She indicated that she paid the debt in allegation 1.c (\$1,103) and that she had a payment plan for the debt in allegation 1.d (\$649). She also indicated that she was working to resolve other SOR debts. She did not provide any documents, such as cancelled checks, bank statements, or creditor statements, showing her payments on these debts. In his FORM brief, Department Counsel suggested Applicant provide this information.⁵

Applicant has not provided a household budget showing monthly household expenses. She did not provide a copy of her earnings statement or a copy of her husband's current income. Without this information, I am unable to assess her current financial status and her ability to pay her past-due debts. The record lacks any evidence of credit or financial counseling.

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.

⁴Item 1; Item 5; Item 6.

⁵Item 3; Government's File of Relevant Material brief submitted by Department Counsel.

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. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant developed significant financial problems when she was unemployed for more than three years. Her husband's income was insufficient to pay all their expenses. Most of the debts have not been resolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) is partially applicable because Applicant was unemployed from April 2008 until October 2011. This mitigating condition cannot be fully applied because she has not provided documentation showing that she acted responsibly by contacting her creditors and/or by making payments on any of her debts after she returned to work.

Because the record evidence indicates that she paid the \$148 debt in allegation 1.j without a garnishment of her salary or a judgment, the good-faith effort requirement of AG ¶ 20(d) is applicable to this debt only. AG ¶ 20(c) is not applicable because there is no evidence of credit counseling or clear indications that her financial problems are being resolved.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's loyalty is not an issue in this case. She has raised two sons and is raising a daughter. The issue in this case concerns the debts listed in the SOR and her actions taken to resolve her debts. Her unemployment significantly contributed to her financial problems. She returned to work more than four years ago and has stated that she is paying some

of her debts. For a favorable finding, Applicant must show through documentation that she has a track record for debt payment. She is not required to pay all her past-due debts at one time, but she must indicate that she has a reasonable plan to pay her debts and is working to pay her debts under the plan. She has not done so. The record lacks any evidence for me to evaluate her current income and expenses or to show payments she has made on her debts. Without this relevant information, I am unable to make a favorable finding.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her finances 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
Subparagraphs 1.a-1.j:	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 a security clearance is denied.

MARY E. HENRY
Administrative Judge