



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



In the matter of:)
)
) ISCR Case No. 14-04886
)
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

February 4, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant remains indebted to 28 creditors in the total approximate amount of \$52,292. She resolved only one of her 29 delinquent debts identified on her Statement of Reasons (SOR). Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on February 21, 2012.¹ On June 13, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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

¹Item 4.

adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR, dated July 17, 2015, and requested that her case be decided by an administrative judge on the written record without a hearing.² Department Counsel submitted the Government's written case on October 6, 2015, containing ten Items.³ A complete copy of the File of Relevant Material (FORM) was provided to Applicant, 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 October 15, 2015. She submitted a one-page response to the FORM (Response), made no objection to consideration of any contents of the FORM, and did not request additional time to respond. Department Counsel had no objections to Applicant's Response and it was admitted. I received the case assignment on December 8, 2015.

Findings of Fact

Applicant is 40 years old, and has worked for her current employer, a defense contractor, since January 2012. She has held a security clearance since approximately 2000 in connection with previous work for other government contractors, as a federal employee, and as a military member. She served in the Army from 1999 to 2003 and was honorably discharged. She earned a bachelor's degree in 2007. She is a single mother to her 17-year old daughter.⁴

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on 29 debts in the total amount of \$52,342. In Item 3, Applicant admitted all 29 of the delinquent debts as set forth in SOR ¶¶ 1.a through 1.cc. Applicant's delinquent accounts appeared on her credit reports dated February 28, 2012; June 2, 2014; and April 24, 2014.⁵

² Item 3.

³ Item 5 is a summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in April 2014. Applicant adopted it as her own statement in Item 6. Therefore, it is admissible.

⁴Item 4.

⁵Items 8, 9, and 10.

Applicant's 29 debts consist of six delinquent medical accounts totaling \$3,960 (SOR ¶¶ 1.a through 1.f); 13 delinquent student loans totaling \$20,029 (SOR ¶¶ 1.g through 1.p, and 1.t through 1.v); and 10 other delinquent consumer collection accounts totaling \$28,353 (SOR ¶¶ 1.q through 1.s and 1.w through 1.cc). Many of Applicant's debts became delinquent in 2010, during a six-month period of unemployment. She was released from her civilian position with the Marine Corps in September 2010, due to unsatisfactory performance, and remained unemployed until December 2010.⁶ Additionally, she attributes her inability to repay her debts to a 2012 accident. Her injuries required surgery and caused her to be placed on disability for a few months while she recovered. She also required additional surgery in 2013. She provided documentation of her medical care.⁷

Only one of her delinquencies has been resolved. Applicant's Answer to the SOR, Item 3, provided documentation that she has fully repaid a single debt, alleged in SOR ¶ 1.d in the amount of \$50. She resolved that debt on July 16, 2015.⁸

In her response to interrogatories, Answer, and Response, Applicant asserted that she was addressing her remaining delinquencies.⁹ She claimed she had placed her student loans in deferment.¹⁰ However, she failed to present documentation to support this claim. Her most recent credit report reflects that her student loans are "at least 120 days or more than four payments past due."¹¹ She also indicated that she had hired a debt management company to assist her in repaying five of her debts (only four were alleged in the SOR including ¶¶ 1.1.w, 1.x, 1.y, and 1.cc.). She presented a one-page repayment schedule from that debt management company. It reflected that Applicant had been a client since February 2012, but failed to document any actual payments to those creditors.¹² In her Response, she also asserted that she has hired a financial advisor, but failed to document the extent of her financial counseling or provide documentation to show her plan to manage her debt. She noted:

Despite how it looks, I do not pose a threat to the interest of National Security. I'm a great citizen, well-rounded, actively participate in voting, my church and I volunteer a lot of time. I've worked with the government both serving the military and post-military for half my life, received several

⁶Item 5 at 1.

⁷Item 6.

⁸Item 3.

⁹Items 3 and 5; Response.

¹⁰Item 6.

¹¹Item 10.

¹²Item 6.

awards and accolades for my performance. So I hope this outweighs what my financial situation looks like.¹³

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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

¹³Response.

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under 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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a long history of delinquent debt. From 2010 to present, she accumulated 29 delinquent accounts totaling \$52,342. Her ongoing pattern of delinquent debt, and history of inability or unwillingness to pay her lawful debts, raises security concerns under DCs 19(a) and (c), and shifts 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 failed to produce sufficient evidence that she has addressed 28 of her 29 delinquent accounts. While she resolved one \$50 debt, she remains indebted on 28 others totaling \$52,292. She offered little evidence from which to establish a track record of debt resolution. Her termination for unsatisfactory performance was not a condition beyond her control. While her accident and subsequent loss of income during her recovery from that accident were conditions beyond her control and contributed to her financial problems, she failed to document that she acted responsibly under such circumstances. She claimed to have received financial counseling, but the extent of that counseling and its effect on her financial situation is unknown. There are no clear indications that her financial problems are being resolved in good faith, or are under control. She did not formally dispute any of her debt. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

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.

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 pertinent facts and circumstances surrounding this case. Applicant served honorably in the Army for four years. She is active in her community and performs volunteer work. However, Applicant is an accountable adult, who is responsible for her voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her

SOR-listed delinquent debts arose over the past five years and appear to remain unresolved despite her employment by a government contractor. She has held a security clearance in the past and is aware of the importance of repaying her debts. She offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of her life to offset resulting security concerns. The potential for pressure, coercion, and duress from her financial situation remains undiminished. Overall, the record evidence leaves me with substantial 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.c	Against Applicant
Subparagraphs 1.d	For Applicant
Subparagraphs 1.e through 1.cc	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.

Jennifer I. Goldstein
Administrative Judge