



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-05119
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro Se*

03/31/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by her finances. She has filed for bankruptcy twice in the past fifteen years. Her recent Chapter 13 bankruptcy case was dismissed because she did not make the required monthly payments. Her past-due debts total over \$20,000 and include delinquent federal and state taxes. Notwithstanding the presence of some favorable information, her past financial history and current finances continue to raise security concerns. Clearance is denied.

History of the Case

On December 12, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a hearing to establish her eligibility for continued access to classified information (Answer).

¹ This action was taken under Executive Order (E.O.) 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 implemented by DOD on September 1, 2006.

On August 20, 2015, Department Counsel sent Applicant the documents the Government would offer at hearing.² On September 17, 2015, I was assigned the case and scheduled the hearing for October 22, 2015. Applicant requested a delay because she was purportedly in the process of finalizing payment plans with her overdue creditors, including the Internal Revenue Service (IRS). I granted her request and rescheduled the hearing for November 19, 2015.³

At hearing, Department Counsel offered exhibits (Ex.) 1 – 8. Applicant testified, and offered Ex. A – I. I granted her request for additional time after the hearing to submit documents and set December 11, 2015, as the deadline for post-hearing submissions. At Applicant's request, I extended the deadline to January 4, 2016. She timely submitted Ex. J and K. All exhibits were admitted into the record. On December 4, 2015, the hearing transcript (Tr.) was received.

Applicant did not submit documents reflecting a payment plan with any of her creditors, to include the IRS. Post-hearing, she submitted a copy of a \$200 check that she sent the IRS and stated she would be submitting "more payment receipts." (Ex. J) No additional documents were received.

Findings of Fact

Applicant is married and has two adult children. She has been working as a federal contractor since approximately 1989, and has held a security clearance since at least 2000. She started having financial problems in about 2000, with a decrease in pay upon moving to her current position in the mailroom. She also attributes her recurring financial problems to caring for close relatives who were too elderly and sick to care for themselves; rising health insurance premiums; the failure on the part of her husband's employer to deduct income taxes from his pay; and an increase in monthly mortgage payments after refinancing her former home. (Tr. at 32-34; Ex. 1 – 2)

In 2000, Applicant filed for Chapter 13 bankruptcy for the first time. She took a second job to pay her recurring monthly expenses, including the Chapter 13 payments. She testified that she paid as required by the bankruptcy plan. Applicant's first bankruptcy was discharged in 2003. (Tr. at 72-75; Ex. 3)

In 2009, Applicant again filed for Chapter 13 bankruptcy. Her finances were again negatively impacted because of the responsibility of caring for elderly and infirm relatives. She worked two jobs to pay her debts, including the required Chapter 13 payments. In 2013, Applicant became sick and was no longer able to work two jobs. She was out of work for several months due to her medical condition and only received a portion of her regular pay. She fell behind on her Chapter 13 payments. By September 2014, Applicant's Chapter 13 default totaled over \$16,500. She started working full-time again in September 2014, but was unable to cure the bankruptcy

² See Exhibit (Ex.) 8 and Hearing Exhibit (Hx.) I.

³ Pre-hearing scheduling correspondence, the notice of hearings, case management order, and post-hearing correspondence, are appended to the record as Hearing Exhibits (Hx.) I – IV, respectively.

default and the trustee filed a motion to dismiss the case. In December 2014, the bankruptcy court dismissed Applicant's second Chapter 13 case. Before getting sick, Applicant paid over \$30,000 into the second Chapter 13 bankruptcy plan. (Tr. at 32-39, 57-58, 72-75; Ex. 4; Ex. B; Ex. C; Ex. G, Ex. I)

The SOR lists 14 delinquent debts totaling over \$20,000. The SOR debts include delinquent federal taxes from 2012; a state tax lien from 2013; and multiple consumer accounts that are over 120-days past due, charged off, or in collections. As of the close of the record, all 14 SOR debts remain unresolved.

Applicant retained a credit repair company (CRC) to help her resolve her debts. She testified that starting in December 2015, she would begin making monthly payments as part of an agreement worked out by the CRC with her creditors. She did not submit a copy of the agreement or proof of payment. Instead, she provided a list of debts that the CRC had disputed and verified through the credit reporting agencies. After the hearing, Applicant sent a \$200 check to the IRS as partial payment of her past-due federal taxes. Her delinquent federal taxes, including her past-due 2012 taxes, total approximately \$7,500. She previously submitted an application to the IRS for an installment agreement. As of the close of the record, however, Applicant had not entered into a payment plan to resolve her past-due taxes. Her state tax debt has been reduced through the involuntary interception of tax refunds, but the state tax lien remains. (Tr. at 38-56, 70-72; Ex. 2; Ex. 7; Ex. D – F; Ex. K)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865, § 2.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that due process proceedings are conducted "in a fair, timely, and orderly manner." Directive ¶ E3.1.10. Judges make certain that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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, by necessity, consideration of the possible risk an 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.

Analysis

Guideline F, Financial Considerations

The financial considerations security concern is explained at 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.

The security concern under Guideline F goes beyond whether an individual might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an individual's financial circumstances cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information. ADP Case No. 14-01479 at 3 (App. Bd. Mar. 4, 2016).

Applicant has been unable to consistently pay her debts for several years. She has twice filed for bankruptcy in the past 15 years. Her recent Chapter 13 case was dismissed after she failed to make her plan payments. Over a year after the Chapter 13 case was dismissed, Applicant's past-due debts total over \$20,000. This record evidence establishes the disqualifying conditions listed at AG ¶¶ 19(a), inability or unwillingness to satisfy debts; and 19(c), a history of not meeting financial obligations.

The financial considerations guideline lists conditions that can mitigate the security concern. I have considered all the mitigating conditions in assessing Applicant's case, including the following:

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.

Applicant's finances have been negatively impacted by matters beyond her control. For a time, she responsibly handled her financial problems by filing for Chapter 13, working a second job, and paying her debts through the Chapter 13 plans. However, her current finances are not under control, as evidenced by over \$20,000 in past-due debt. Her past-due debts include delinquent federal and state taxes, as well as several past-due debts that are each less than \$100. Despite being provided multiple opportunities to document her current efforts to resolve her past-due debts, Applicant did not provide such evidence. Her past-due debts remain unresolved.

After considering Applicant's entire financial history, both positive and negative, it appears likely that her financial problems and the attendant security concerns raised by her troubled financial picture will likely continue into the foreseeable future. I further find that even after extending credit under AG ¶ 20(b) and considering the other favorable record evidence that such matters are insufficient to fully mitigate the security concerns raised by Applicant's current financial situation.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.⁴ Applicant failed to meet her burden.

⁴ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the factors listed at AG ¶ 2(a).⁵ I hereby incorporate my comments under both guidelines at issue, and highlight some additional whole-person factors.

I gave due consideration to Applicant's long employment as a federal contractor and that she has held a security clearance since at least 2000. However, as the Appeal Board recently noted:

The government need not wait until an individual mishandles or fails to safeguard classified information before it can make an unfavorable security clearance decision. Even those with good prior records can encounter circumstances in which their judgment and reliability might be compromised. ISCR Case No. 14-02158 at 2 (App. Bd. Mar. 21, 2016).

Here, Applicant's past financial problems and current finances raise concerns about her ability to continue to discharge her security responsibilities. Overall, the record evidence leaves me with doubts about her eligibility for continued access to classified information.

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 (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.p:	Against Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

⁵ The non-exhaustive list of adjudicative factors are: (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.