



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



In the matter of:)	
)	
)	ISCR Case No. 14-05357
)	
)	
Applicant for Security Clearance)	

Appearances

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

12/24/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On December 29, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 18, 2015. A notice of hearing was issued on September 11, 2015, scheduling the hearing for November 5, 2015. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant Exhibits (AX) A-C, which were admitted without objection. The transcript was received on November 13, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the SOR allegations under Guideline F, with the exception of 1.b and 1.e. She provided explanations for each alleged debt.

Applicant is 50 years old. She graduated from high school and received an associate's degree in 1984. Applicant is married and has one adult daughter. She has been with her current employer since 1984 where she serves as a senior administrator. She completed a security clearance application in 2013. (GX 1) Applicant has held a security clearance since 1984.

The SOR alleges approximately \$102,000 in delinquent debt, which includes student loans, and collection accounts. (GX 2 and 3) Applicant believes that she is responsible for about \$65,000 in delinquent debt.

Applicant cites to a 2007 illness that forced her mother to move in with her and required Applicant to be responsible for her mother's medical and financial needs. (AX C) When Applicant's mother died in 2012, she had to pay her property taxes. In addition, Applicant's husband earned a salary in the range of \$30,000, which did not provide benefits. (Tr. 52)

In 2011, Applicant became ill and was on long-term disability for one year. She returned to work in 2012 on a contract basis. She attempted to obtain money from her retirement plan based on hardship. She was refused. (AX C)

As to SOR allegation 1.a for an amount of \$33,695, Applicant co-signed a student loan for her daughter in 2007. After the first year her daughter decided not to return to school. Applicant was not expecting to pay for the loan until the daughter had completed college in four years. She tried to obtain some tuition money from the school but was not successful at first. The loan became due in 2008. Applicant claims the loan became delinquent in February 2009. (Tr. 27) Applicant's daughter made some payments on the student loan, but the amount she paid was not clear. Applicant stated that her daughter will make payments on the loan in the amount of about \$275 a month. In 2015, Applicant received a refund of about \$10,000 from the school. (Tr. 43)

In 2007, Applicant opened an account for a loan in the amount of \$50,000, which is the debt alleged in 1.b. The amount of the debt is now \$37,300. She made payments on the loan from 2007 until 2010. (AX B) She became very ill and had two surgeries during the period of March 2011 to April 2012. (Tr. 33, AX C) She was on disability for a period of time. She made sporadic payments of perhaps \$1,000. She has a 2012 judgment in the amount of \$37,300 that is not paid. She states that she tried to make more payments, but learned that the account was charged-off. (Tr. 37) Her last payments were made in 2013.

As to the debt in 1.c for a medical collection account in the amount of \$139, Applicant initially denied the debt, but paid the debt in 2015. She submitted a receipt for the payment. (AX A)

As to the debt in 1.d for a collection account in the amount of \$30,983, Applicant obtained a loan in 2008. She stated that the loan was “closed out” in 2010, but was unpaid. (Tr. 40) She did not pay the debt, and it no longer appears on her credit report. (Tr. 32)

As to the debt in 1.e for a collection account in the amount of \$55, Applicant denied that she owes any money for such an account. She has no knowledge of the account and it does not appear on her credit report. She was not successful in locating the original creditor. (Answer to SOR)

Applicant’s daughter signed an affidavit on January 17, 2015, which stated that she would accept responsibility for the 2007 student loan (\$30,983) and a second loan from 2008 which totals \$33,695. In that affidavit she relieves her mother as co-signer for the two loans. There is no documentation that Applicant’s daughter is making any payments.

Applicant’s annual salary is about \$72,000. She estimates that she has a net monthly remainder of about \$500. (Tr. 52) Applicant is current on her daily expenses, mortgage, and car payment. She has not incurred any new debts.

Applicant’s colleague testified that he has known her for about four years. He sees her at work on a daily basis. He describes Applicant as diligent, dependable, and responsible. (Tr. 61) He is aware of the security concerns regarding Applicant’s finances.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that she incurred delinquent debt for student loans, one judgment, and collection accounts. Her credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant has unresolved debt from 2008 due to the student loan that she co-signed with her daughter, and another loan that she obtained for herself which has been charged-off. She states that she recently started payments on one loan. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant was seriously ill and on disability for a time. She cared for her ill mother and paid property taxes for her. However, she has been steadily employed since 2013. She paid two small debts recently. She has not incurred new debts. She has unresolved debt in an approximate amount of \$90,000, and she has made no efforts to pay them, but relied on the fact that the accounts are not on the credit report and were "charged-off."

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above recently took steps to pay some small debts. FC MC 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) 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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 50 years old. She has been with her current employer since 1984. She is married and has one adult daughter. She has held a security clearance for many years. She is recommended by a colleague for a security clearance. She encountered circumstances beyond her control including illness, her daughter's failure to pay student loans, and the need to care for her mother.

Applicant did not provide sufficient information concerning a resolution of her debts. She receives some mitigation for the two small debts that she paid. However, she knew of the Government's concern about her finances since the 2014 SOR. She relied on a large account that was charged off for which she believes she has no responsibility. She has not shown a meaningful track record of payments to mitigate the security concerns under the financial considerations guideline.

Applicant did not persuade me that she refuted or mitigated the Government's case concerning the financial considerations security concerns. Any doubts must be resolved in the Government's favor.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For 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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge