



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



In the matter of:)	
)	
)	ISCR Case: 15-00445
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

03/15/2016

Decision

DAM, Shari, Administrative Judge:

Between 2010 and 2014 Applicant accumulated 12 delinquent debts, totaling over \$23,000. She did not present sufficient evidence to prove that they are resolved and that her current financial situation is stable. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On August 6, 2012, Applicant submitted a security clearance application (SF-86). On July 25, 2015, 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; 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), effective within the DOD after September 1, 2006.

Applicant answered the SOR on August 21, 2015 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On October 31, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on November 3, 2015, and received by her on November 11, 2015. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. She did not submit any additional exhibits nor object to the Government's documents identified as Items 1 through 5 in the FORM. Hence, those Items are admitted into evidence. DOHA assigned the case to me on February 17, 2016.

Findings of Fact

In her Answer, Applicant admitted all 12 of the allegations contained in Paragraph 1 of the SOR. (Item 1.) Her admissions are incorporated into these findings of fact.

Applicant is 39 years old and married. She and her husband have two children, ages 12 and 14. Since February 2011 she has worked as a clerk for a federal contractor. Prior to this position she was steadily employed, except for a period from June 2009 to March 2010. (Item 2.)

Based on credit bureau reports (CBR) from August 2012 and December 2014, the SOR alleged 12 delinquent debts that totaled \$23,581.¹ The debts became delinquent between 2010 and 2014. (Items 3, 5.) In her SF-86, Applicant disclosed several delinquent debts and stated that they became delinquent because her husband purchased luxury items that they could not afford. She stated that those purchases caused them financial difficulties. (Item 2.)

In her Answer to the SOR, Applicant stated that since submitting her SF-86 she filed a Chapter 7 bankruptcy. She submitted a copy of a discharge order entered in June 2015. (Item 1.) She did not provide any other information regarding the bankruptcy, or which specific delinquent debts were included in it.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

¹The allegation in SOR ¶ 1.i does not reflect an amount of the debt. Based on the August 2012 CBR the amount of the debt is \$995. The allegation in SOR ¶ 1.j does not reflect an amount of the debt. Based on the December 2014 CBR the amount of the debt is \$546.

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(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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

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 permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that an adverse decision to an applicant shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.²

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant accumulated 12 delinquent debts from 2010 to 2014, which she was unable or unwilling to resolve. The evidence raises both security concerns, thereby shifting 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

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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.

According to the evidence in the case file, Applicant's delinquent debts accumulated between 2010 and 2014, and continue to date. Because they are ongoing, AG ¶ 20(a) does apply. There is some evidence indicating that the debts occurred as a result of Applicant's husband's extravagant spending habits, which were circumstances beyond her control. However, there is insufficient evidence to demonstrate that she took responsible action under the circumstances; thus, AG ¶ 20(b) establishes minimal mitigation.

Applicant provided no evidence of credit counseling, budget planning, or changes to bring her financial situation under control. She submitted insufficient proof of progress toward overall debt resolution or a track record of financial responsibility. She did not establish mitigation of the delinquent debts under AG ¶ 20(c) or AG ¶ 20(d). Applicant admitted owing all debts alleged in the SOR; hence, AG ¶ 20(e) is not pertinent.

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.

According to 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 is 39 years old. She began employment with a defense contractor in February 2011. She began to incur delinquent debts in 2010, as a result of her husband's irresponsible spending. The only evidence that she submitted to address the status of her delinquent debts was a copy of a June 2015 court order discharging unspecified delinquent debts through a Chapter 7

