



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00534

Appearances

For Government: Benjamin Dorsey, Esquire, Department Counsel
For Applicant: *Pro se*

02/29/2016

Decision

HOWE, Philip S., Administrative Judge:

On July 23, 2012 Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP). On July 24, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 4, 2015. Applicant has 16 delinquent debts listed in the SOR. Applicant requested her case be decided on the written record in lieu of a hearing.

On September 28, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to the Applicant on September 29, 2015. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 5, 2015.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on November 4, 2015.

Department Counsel submitted six Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on September 18, 2012. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on February 17, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved in the FORM to amend the SOR by withdrawing Subparagraphs 1.l, 1.m, and 1.n. Applicant denied these three allegations. Because Applicant did not file a Response to the FORM, she consented to the motion by her silence. I granted the motion.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.d, 1.f, 1.l to 1.n in the original SOR. She admitted all other allegations in the SOR between Subparagraphs 1.a to 1.p. (Items 1, 2)

Applicant is 42 years old. She has a college degree. She is currently unmarried. Appellant has four years of military service in the Air Force. She has two adult children,

one of whom lives with her. Since 1999 she has worked for a defense contractor. (Item 3)

Applicant's SOR lists 16 delinquent debts totaling \$118,563. The bulk of these debts start in 2007. The debts include credit card debts and student loans she has not repaid.

Applicant submitted documents showing three debts are being resolved. She claims she paid the \$1,167 debt listed in Subparagraph 1.d in 2015, and the \$730 debt in Subparagraph 1.f. The \$495 debt in Subparagraph 1.g she is paying on the installment plan. She admits paying debts valued at less than \$2,200. (Items 1, 2, 5, 6)

None of her other debts have been resolved. Applicant's Answer also claims creditors on the remaining debts have not contacted her since 2010 so she has not repaid them. The bank debt in Subparagraph 1.p for \$1,811 Applicant asserts is closed with a zero balance because she cannot find it on her credit reports. She did not submit documentary proof that the debt was resolved in any way. (Items 2, 5, 6) Applicant's Answer also states she has not received any correspondence since 2011 from the bank listed in the first three allegations concerning student loans she incurred to get her college degree. (Subparagraphs 1, a, 1.b, and 1.c) She claims she tried to arrange a payment plan but the bank wanted \$600 each month on the \$61,924 owed. Therefore she has not paid the debt or attempted to make another arrangement. (Items 2, 5, 6)

Applicant's Answer asserts she has maintained a good credit history for the past five years. She pays her \$650 rent on time and her \$450 car loan payment on time. She admits she has not sought credit counseling because she does not think her debts were caused by "frivolous spending or living outside my means." (Items 2, 5, 6)

Applicant did not submit any documentation that she has participated in credit counseling or budget education. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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 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 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.

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 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 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. 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.

The guideline at AG & 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2007 to the present, Applicant accumulated 16 delinquent debts, totaling \$118,563 that remain unpaid or unresolved except for three small debts amounting to less than \$2,200.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

- (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 (b) would apply if any reason were shown by Applicant to have a substantial effect on her ability to repay her debts in the past eight years. She did not present any reasons why she could not repay her debts and that she acted responsibly in this situation. She continuously states in her Answer either that she cannot find the debt on her credit report, or has not heard from the creditor for several years, so she has not repaid the money she borrowed for student loans, credit cards, or other purposes. Applicant seems to claim that because she pays her rent and car payment totaling \$1,100 monthly, she does not need to resolve her other debts. She borrowed a

great deal of money and now declares she cannot repay it or will not repay it. She failed to meet her burden of proof on that issue.

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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has not taken any action to resolve her delinquent debts, except for three smaller debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Her inaction will continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on the bulk of her delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for 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 to 1.c, 1.e, 1.h to 1.k:	Against Applicant
Subparagraphs 1.d, 1.f, and 1.g:	For Applicant
Subparagraphs 1.l to 1.n:	Withdrawn
Subparagraphs 1.o and 1.p:	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.

PHILIP S. HOWE
Administrative Judge