



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



In the matter of:)
)
 ---) ISCR Case No. 15-01498
)
 Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

05/09/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On September 10, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On some unspecified date before September 8, 2015, the Defense Office of Hearings and Appeals (DOHA) issued her a set of interrogatories. She responded to the interrogatories on September 8, 2015.² On September 11, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹ Item 3 (e-QIP, dated September 10, 2012).

² Item 4 (Applicant's Answers to Interrogatories, dated September 8, 2015).

Program (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. On October 19, 2015, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on November 30, 2015, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to her case. Applicant received the FORM on December 10, 2015. A response was due by January 9, 2016. Applicant did not submit any response to the FORM. The case was assigned to me on May 2, 2016.

Findings of Fact

In her Answer to the SOR, while not using the specific terms "admit" or "deny," Applicant essentially admitted all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.h.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 63-year-old employee of a defense contractor. She has been a material handler or material specialist with her current employer since July 1995.³ Her educational background has not been established as she did not describe it in her e-QIP and the investigator from the U.S. Office of Personnel Management (OPM) failed to address it during her interview.⁴ Applicant has never served with the U.S. military.⁵ It is unclear if she was ever granted a security clearance.⁶ Applicant has never been married, but she cohabited with her significant other from November 2001 until June 2015, when he died.⁷ She has two children from previous separate relationships: a daughter born in 1969 and a son born in 1971.⁸

³ Item 3, *supra* note 1, at 9.

⁴ Item 4 (Personal Subject Interview, dated November 7, 2012).

⁵ Item 3, *supra* note 1, at 11.

⁶ Item 3, *supra* note 1, at 26.

⁷ Item 3, *supra* note 1, at 13-14; Item 2 (Applicant's Answer to the SOR, dated October 19, 2015).

⁸ Item 3, *supra* note 1, at 15-16, 19-20; Item 4 (Personal Subject Interview), *supra* note 4, at 1.

Financial Considerations⁹

It is unclear when Applicant first experienced financial difficulties, but in reviewing her e-QIP, her credit reports from September 2012,¹⁰ and January 2015,¹¹ as well as her comments to the OPM investigator, and in her Answer to the SOR,¹² it appears that she either failed to timely file her federal income tax returns, or pay the necessary income taxes, for the tax years 2004 through 2011, or a combination thereof. She attributed her income tax failures (to file or to pay) to: poor self-control; helping family members who were sick and without health insurance; deaths in the family; and too many unspecified problems at the time. With respect to the tax year 2011, she simply forgot to file her income tax return.¹³ In addition to the unpaid income taxes, other accounts became delinquent and were placed for collection or charged off. Applicant had delinquent credit card accounts and telephone accounts. Nevertheless, in November 2012, Applicant embarked on a three-day cruise to the Bahamas.¹⁴

In addition to unpaid income taxes for a multi-year period (SOR ¶ 1.g.), the SOR identified six purportedly continuing delinquent accounts, totaling approximately \$11,820, which had been placed for collection or charged off. In addition, there is the one failure to file federal income tax returns for the tax year 2011 (SOR ¶ 1.h.). Although Applicant contended that she intended to start making payments on her accounts, she failed to submit any documentation to support her contentions pertaining to her actions or activities to resolve them. There is no documentary evidence that any of the accounts were placed in repayment plans or that payments were made for any of them. Applicant promised the OPM investigator in November 2012 that she would continue paying her creditors “one card at a time,” and that she had called some creditors to set up repayment plans.¹⁵ To date, approximately three and one-half years later, she has failed to submit any documentation to support her contentions. In October 2015, she again repeated her intentions, but once again, she failed to submit any documentary evidence to indicate that she made any payments on any of the delinquent accounts, including one account with a moderate balance of \$182.

Those debts are described as follows: an unspecified bank account with a past-due and unpaid balance of \$8,634 (SOR ¶ 1.a.); a bank credit card account with a past-

⁹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 19, 2012); Item 6 (Equifax Credit Report, dated January 13, 2015); Item 3, *supra* note 1, at 26-30; Item 4 (Personal Subject Interview), *supra* note 4, at 3-4; Item 2, *supra* note 2.

¹⁰ Item 5, *supra* note 9.

¹¹ Item 6, *supra* note 9.

¹² Item 4 (Personal Subject Interview), *supra* note 4.

¹³ Item 4 (Personal Subject Interview), *supra* note 4, at 2-4; Item 3, *supra* note 1, at 27-29.

¹⁴ Item 4 (Personal Subject Interview), *supra* note 4, at 1.

¹⁵ Item 4 (Personal Subject Interview), *supra* note 4, at 3-4.

due and unpaid balance of \$911 (SOR ¶ 1.b.); an unspecified account with a past-due and unpaid balance of \$782 (SOR ¶ 1.c.); a bank credit card account with a past-due and unpaid balance of \$340 that was charged off (SOR ¶ 1.d.); a telephone account with an unpaid balance of \$182 (SOR ¶ 1.e.); an unspecified bank account with an unpaid balance of \$1,241 (SOR ¶ 1.f.); and an unspecified amount of federal income taxes for the tax years 2004 through 2011 (SOR ¶ 1.g.).

There is no evidence that Applicant has received financial counseling. Applicant failed to furnish a personal financial statement setting forth her net monthly income; her monthly household expenses; and her monthly debt payments. In the absence of such information, I am unable to determine if she has any monthly remainder available for savings or spending. Thus, it is nearly impossible to determine if Applicant's finances are under control or if she is still experiencing financial difficulties. In the absence of any documentation to confirm Applicant's contentions regarding what she has claimed to be doing with respect to her creditors and her delinquent accounts, there is a paucity of evidence to indicate that her financial problems are now under control.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."¹⁶ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."¹⁷

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

¹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”¹⁸ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.¹⁹

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”²⁰

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”²¹ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

¹⁸ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁰ *Egan*, 484 U.S. at 531.

²¹ See Exec. Or. 10865 § 7.

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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. In addition, a "failure to file annual Federal, state, or local income tax returns as required . . ." may raise security concerns under AG ¶ 19(g). Applicant has had a long-standing problem with her finances which existed as far back as 2004 when she failed to timely file the first of many years of federal income tax returns. A number of accounts subsequently became delinquent and were placed for collection or charged off and income taxes remained unpaid. AG ¶¶ 19(a), 19(c), and 19(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."²²

AG ¶¶ 20(a), 20(c), and 20(d) do not apply. AG ¶ 20(b) minimally applies. The nature, frequency, and recency of Applicant's continuing financial difficulties since about

²² The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

2004 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Although Applicant did not attribute any one particular cause to her financial problems, she did mention: poor self-control; helping family members who were sick and without health insurance; deaths in the family; and too many unspecified problems at the time. With respect to the tax year 2011, she simply forgot to file her income tax return. The above factors were, to some degree, beyond Applicant’s control, but the impact of them individually or collectively, was not specifically discussed. In November 2012, Applicant embarked on a three-day cruise to the Bahamas. Other than claiming that she had intentions to resolve the delinquent accounts and pay her taxes, or that she would start paying some creditors, Applicant failed to demonstrate what actions she has taken to address her delinquent debts, and she has offered no documentary evidence of a good-faith effort to resolve any of them. She essentially continues to ignore her creditors.

There is no evidence to indicate that Applicant received financial counseling. In the absence of a personal financial statement, or any current information pertaining to her monthly income, expenses, and available funds for discretionary savings or spending, it is impossible to determine the current state of her financial affairs. Because of her failure to confirm payment of even her smallest delinquent accounts, and her failure to furnish documentation regarding any of the accounts, the evidence leads to the conclusion that Applicant’s financial problems are not under control. Furthermore, there is no documentary evidence that Applicant has, in fact, finally filed her federal income tax returns or paid any taxes. Applicant has not acted responsibly by failing to address her delinquent accounts while employed and by failing to make limited, if any, efforts of working with her creditors.²³ Applicant’s actions under the circumstances confronting her cast doubt on her current reliability, trustworthiness, and good judgment.²⁴

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 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

²³ “Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

²⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁵

There is some evidence in favor of mitigating Applicant's conduct. She has been with her current employer since July 1995. She appears to have been a faithful and supportive family member to her immediate and extended family members. There is no evidence of security violations.

The disqualifying evidence is more substantial. Applicant had declared her intentions of bringing her accounts current and repaying them. She also claimed that she had filed or would file her delinquent federal income tax returns and would pay any unpaid income tax balances. However, to date, even three and one-half years after first declaring her intentions to the OPM investigator, she has not. Instead, although she had the money and the time to take a cruise to the Bahamas in 2012, Applicant has seemingly continued to ignore her responsibilities as to filing income tax returns and paying her creditors, including the Internal Revenue Service (IRS). Applicant offered no evidence as to her reputation for reliability, trustworthiness, and good judgment. Applicant's long-standing failure over the years to voluntarily repay her creditors, even in the smallest amounts, or to arrange even the most reasonable payment plans, reflects traits which raise concerns about her fitness to hold a security clearance. Although she made declarations that some accounts would be resolved, she offered no documentary evidence to support her declarations. There are no clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment. Considering the absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:²⁶

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an

²⁵ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

²⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

