



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



In the matter of:)
)
) ISCR Case No. 15-01888
)
Applicant for Security Clearance)

Appearances

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

02/17/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish a track record of financial responsibility. She also failed to establish that her finances are under control. Guideline F security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 6, 2012, seeking to retain a clearance required for her job. After reviewing the information gathered during a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on August 29, 2015.¹ Applicant answered the SOR on September 14, 2015, and elected to have her case decided on the written record, in lieu of a hearing.

¹ DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), dated November 3, 2015, was provided to her by transmittal letter dated November 4, 2015. She acknowledged receipt of the FORM on November 10, 2015. Applicant was allowed 30 days to submit any objections to the FORM and to provide material in rebuttal, extenuation, and mitigation. Applicant timely responded to the FORM and submitted information in mitigation and extenuation, which was admitted and included in the file. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on January 21, 2016.

Findings of Fact

Applicant admitted the 16 SOR factual allegations, with explanations. Her admissions are incorporated herein as findings of fact. After a review of the record evidence, including her 2012 SCA, her answer to the SOR, and her response to the FORM, I make the following additional findings of fact:

Applicant is a 57-year-old pay intake analyst employed by a federal contractor. She received a vocational school certificate in 1991, completed an associate's degree in 2012, and has continued working on her bachelor's degree to present. Applicant married her first spouse in 1980 and divorced in 1987. She married her second spouse in 1989 and divorced in 2010. She has three adult children ages 38, 37, and 24.

Applicant's work history shows that she was employed from 1994 to April 1997. She then had an eight-month period of unemployment between April and November 1997. She was hired in November 1997, and has remained fully employed to present. She was hired by her current employer, a federal contractor, in February 2011.

Apparently, Applicant was first granted access to classified information at the secret level in 1984, while employed with a federal contractor and detailed to work for another government agency. It is not clear whether Applicant has continuously possessed a security clearance since then. However, there is no evidence to show that Applicant has compromised her security clearance or had any security issues, except for the current SOR allegations.

Applicant disclosed in Section 26 (Financial record) of the 2012 SCA that she filed for bankruptcy protection in 2000. Additionally, she disclosed that she had financial problems, which included a defaulted loan, and numerous delinquent credit cards and consumer credit accounts, many of which were more than 120 days delinquent. The subsequent security clearance background investigation revealed the 16 delinquent accounts alleged in the SOR, totaling over \$23,600. The delinquent accounts are established by the FORM's credit reports and Applicant's admissions. In her answer to the SOR, Applicant indicated that there may be "a few more" delinquent accounts not included in the SOR.

In her 2012 SCA, and in her answer to the SOR, Applicant claimed that in the past she was always current on her bills and maintained a good credit rating. She

attributed her financial problems to her 2008 divorce. The divorce court granted her monthly alimony (\$750) and support for her daughter (\$750). Applicant believed that her ex-husband was required to pay 75 percent of their marital debts. She claimed that he failed to pay most of her alimony, and did not pay any of the marital debts he was ordered to pay by the court.

Applicant's daughter's support stopped about 18 months after the divorce. Applicant continued to receive some of her alimony, but the alimony and her earnings were insufficient to cover her living expenses and existing financial obligations. Applicant moved to an apartment to lower her expenses, but she was the sole provider for her family, and she was never able to catch up with her delinquent debts.

In her answer to the SOR, Applicant stated that she wanted to file for bankruptcy protection, but was afraid to do so. She was told that she would lose her security clearance and her job if she filed for bankruptcy protection. Applicant averred that she tried to negotiate payment plans with her creditors, but they were asking for more than what she could afford to pay.

Applicant submitted documentation showing that she filed for Chapter 13 bankruptcy protection in December 2015. (FORM Response) She believes this is the fastest way to settle her debts, and considers the bankruptcy reorganization plan as her repayment plan. Applicant reiterated that her financial problems were caused by her 2008 divorce and her ex-husband's failure to provide her with alimony and to pay his share of the marital debts as required by the court order. She also repeated that she attempted to work out payment plans with the collection agencies, but they wanted too much money and she could not afford to establish the payment plans.

Applicant presented no documentary evidence of any efforts taken to investigate her debts, contact creditors, pay, or otherwise resolve any of the above delinquent debts from the date she acquired the debts until she filed for bankruptcy in December 2015. The 2012 and 2015 credit reports show many delinquent accounts opened before 2008, but they also show numerous delinquent accounts that were opened by Applicant after the divorce. I also note that Applicant has a significant number of student loans that are currently in deferment, but will become due in the near future.

Applicant provided little information about her financial situation. She did not provide any information about her current income, monthly expenses, and whether her current income is sufficient to pay her current living expenses and the future bankruptcy payment. She did not provide any evidence to show that she recently participated in financial counseling or that she follows a budget.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG lists disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. (AG ¶ 18)

Applicant's 16 SOR delinquent accounts raise the applicability of two financial considerations disqualifying conditions: AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations."

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

(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

(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.

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems are ongoing, and her evidence is insufficient to establish that she is in control of her financial problems. She has been fully employed since 1997, and she has worked for her employer since 2011. However, she presented little documentary evidence of any efforts to contact creditors, pay, or otherwise resolve her debts since she acquired them until she filed for bankruptcy protection in December 2015.

Applicant provided little explanation for her lack of action to pay or otherwise resolve her debts, except for blaming her current financial problems on her 2008 divorce. Even considering Applicant's divorce as a circumstance beyond her control that contributed or aggravated her financial problems, Applicant failed to present sufficient evidence to show that she acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b).

Moreover, Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income and expenses, and whether her current income is sufficient to pay her living expenses and debts. She did not provide evidence to show that she recently participated in financial

counseling or that she follows a budget. I considered that Applicant just filed for Chapter 13 bankruptcy protection, notwithstanding, her petition has not been approved by the court, there is no indication that Applicant will be able to afford the bankruptcy payments, or that the bankruptcy proceeding will resolve her financial problems.

On balance, and based on the little information provided, Applicant's evidence is insufficient to establish clear indications that she does not have a current financial problem, or that her financial problem is being resolved, or is under control. In sum, Applicant failed to establish that she has a track record of financial responsibility.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant receives credit for her years working for federal contractors while possessing a security clearance without any security issues or concerns, except for those in the current SOR.

Notwithstanding, Applicant failed to present sufficient evidence to establish a track record of financial responsibility, that she currently does not have a financial problem, and that her finances are under control. She failed to mitigate the Guideline F security concerns.

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
Subparagraphs 1.a-1.p:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge