



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-02019
)	
)	
Applicant for Security Clearance)	

Appearances

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

03/17/2016

Decision

HOGAN, Erin C., Administrative Judge:

On September 14, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 after September 1, 2006.

On October 5, 2014, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on December 3, 2015. Applicant received the FORM on December 14, 2015. She had 30 days from the receipt of the FORM to submit matters in response to the FORM. Applicant did not submit a response to the FORM. The case was forwarded to the Hearing Office on February 1, 2016, and assigned to me on March 1, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her response to the SOR, Applicant admits to all SOR allegations with the exception SOR ¶ 1.j, which she denied. (Item 2)

Applicant is an employee of a DOD contractor seeking to maintain her security clearance. She has worked for her current employer since July 2012. She is a high school graduate. Since August 2009, she has been separated from her husband and has two children, a daughter, age 25 and a son, age 15. (Item 3)

On August 1, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). (Item 2) In "Section 26, Financial Record – Delinquency Involving Routine Accounts," Applicant indicated that she had several delinquent accounts, including a car repossession. She had co-signed on an automobile loan for her nephew. He did not make the payments and the car was repossessed. Another account involved the purchase of a lap top computer. Applicant also listed several delinquent credit card accounts. She indicated that she became behind on her bills when she separated from her husband. (Item 2, section 26)

A subsequent background investigation revealed the following delinquent accounts: a \$19,606 charged-off account as a result of the car repossession, date of last action May 2010 (SOR ¶ 1.a: Item 4 at 6; Item 5 at 2); a \$1,461 medical account placed for collection in May 2010 (SOR ¶ 1.b: Item 5 at 2); a \$1,441 medical account placed for collection in February 2009 (SOR ¶ 1.c: Item 4 at 7; Item 5 at 2); a \$332 medical account placed for collection in January 2014 (SOR ¶ 1.d: Item 5 at 2); a \$218 medical account placed for collection in June 2010 (SOR ¶ 1.e: Item 5 at 2); and a \$130 medical account placed for collection in March 2014. (SOR ¶ 1.f: Item 5 at 2)

Additional delinquent accounts include: a \$75 medical account placed for collection in March 2014 (SOR ¶ 1.g: Item 5 at 2); a \$43 medical account placed for collection in March 2012 (SOR ¶ 1.h: Item 4 at 8; Item 5 at 2); a \$550 satellite television account placed for collection in October 2011 (SOR ¶ 1.i: Item 4 at 5); a \$152 medical account placed for collection in May 2010 (SOR ¶ 1.j: Item 4 at 7); a \$366 account placed for collection in July 2012 (SOR ¶ 1.k: Item 4 at 7; Item 5 at 2); and a \$466 department store credit card that was charged off in October 2011. (SOR ¶ 1.l: Item 4 at 8)

In her Response to the SOR Applicant states that the \$19,606 owed after the car repossession was "Charged OFF CLOSED 9-8-10." She admits that the debts alleged in SOR ¶¶ 1.b, 1.e, and 1.f remain "OPEN." She claims the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.g – 1.j and 1.l "DIDN'T SHOW ON MY CREDIT REPORT." She indicates the debt alleged in SOR ¶ 1.k is "PAID IN FULL." (Item 2) The February 15, 2015, credit report indicates that this debt is paid. SOR ¶1.k is found for Applicant. (Item 5 at 2)

Applicant did not explain how she encountered financial problems. She did not indicate what her plans were to resolve her outstanding delinquent debts. She did not

provide information on her current financial situation such as her monthly income and monthly expenses. She did not provide any character references, performance evaluations, or awards that could be considered under the whole-person concept.

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 must be considered when determining an applicant's eligibility for access to classified information.

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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security 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.

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.” 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 notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has 12 delinquent debts, owing approximately \$24,840. The largest debt was for an automobile repossession with a balance of \$19,606. The delinquent debts were incurred between February 2009 and March 2014. Applicant has a history of financial irresponsibility.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

The Government’s substantial evidence and Applicant’s admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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;

AG ¶ 20(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(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

¶ 20(a) does not apply. Applicant's financial problems continue. While she resolved one of the debts, the remaining delinquent debts are unresolved. She did not mention how she plans to resolve these debts. Most of the debts have relatively small balances, but Applicant has done nothing to resolve them. Questions about Applicant's reliability, trustworthiness, and good judgment remain.

The first part AG ¶ 20(b) applies because Applicant indicates that her marital separation caused financial problems. According to her e-QIP, she and her husband separated in August 2009, which explains several of the delinquent debts incurred in 2009 and 2010. This is considered a circumstance beyond Applicant's control. However, I cannot conclude that Applicant acted responsibly under the circumstances because Applicant continued to incur delinquent debts between 2011 and 2014. She also has not taken action towards resolving her delinquent accounts with the exception of the debt alleged in SOR ¶ 1.k.

AG ¶ 20(c) does not apply. There is no evidence that Applicant attended financial counseling. Applicant did not indicate whether she had a plan to resolve her delinquent accounts. She did not provide information about her current financial status. Applicant's financial problems are unlikely to be resolved in the near future.

AG ¶ 20(d) partially applies because Applicant resolved the debt alleged in SOR ¶ 1.k. Applicant did not demonstrate that she made a good-faith effort to resolve her remaining delinquent accounts. Several of the accounts had relatively low balances which could have been resolved within a reasonable time period. For this reason AG ¶ 20(d) is given less weight.

AG ¶ 20(e) does not apply, although Applicant disputes the debt alleged in SOR ¶ 1.j, she did not provide information as to why she disputes it other than stating it does not appear on her credit report. She did not provide information as to whether she formally disputed the debt and what actions were taken to resolve the debt.

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 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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances that would mitigate financial considerations security concerns. While Applicant resolved one of the debts, the remaining 11 debts are unresolved. It is unknown whether Applicant has sufficient income to meet her financial obligations.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant may be able to demonstrate a track record of resolving her financial obligations at some point in the future. At present, it is too soon to make this conclusion. The security concerns raised under financial considerations are not mitigated.

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.j, 1.l:	Against Applicant
Subparagraph 1.k:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge