



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-05252
)	
)	
Applicant for Security Clearance)	

Appearances

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

02/03/2016

Decision

HOGAN, Erin C., Administrative Judge:

On July 25, 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 August 14, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on September 1, 2015. On October 2, 2015, Applicant responded to the FORM and provided additional documents. Her Response to the FORM and attached documents are admitted as Item 7. Department Counsel indicated no objection to Applicant's Response to FORM on November 7, 2015. (Item 8) On November 9, 2015, the FORM was forwarded to the Hearing Office and assigned to me on November 17, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Rulings on Evidence

Item 4 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. It is a summary of Applicant's Personal Subject Interview completed by the investigator conducting her background investigation on May 20, 2015. It is unsworn and unauthenticated. DODD 5220.6, Enclosure 2, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)).

Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte* because Item 4 is not properly authenticated. Applicant's failure to mention this issue in a response to the FORM is not a knowing waiver of the rule because she more than likely was unaware of the rule. Waiver means "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner, editor-in-chief, 9th ed., West 2009).

While Department Counsel mentioned the requirement in ¶ E3.1.20 of the Directive in Footnote 1 of the FORM, I cannot conclude Applicant expressly waived this rule because she did not mention it in her response to the FORM. In accordance with the Directive, Enclosure 2, ¶ E3.1.20, Item 4 is not admissible and will not be considered in this decision because the document is not authenticated.

Findings of Fact

In her response to the SOR, Applicant admits the SOR allegations. (Item 2)

Applicant is an employee of a DOD contractor seeking to obtain a security clearance. She has worked for her current employer since November 2010. She was awarded a high school diploma and has some college credit. She is married. She and her husband have been separated since 1999. She has two daughters, ages 17 and 14. (Item 3)

On May 31, 2013, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed several delinquent accounts. (Item 3, section 26) A subsequent background investigation revealed the following delinquent accounts: three student loan accounts placed for collection in the amount of \$5,641, \$5,263, and \$1,526 (SOR ¶¶ 1.a, 1.b, and 1.d: Item 6 at 1-2); a \$2,210 online university account placed for collection (SOR ¶ 1.c: Item 5 at 8; Item 6 at 2); a \$1,166 account placed for collection (SOR ¶ 1.e: Item 6 at 2); and \$915 debt owed to a townhome rental agency placed for collection (SOR ¶ 1.f: Item 6 at 2).

Additional debts include: a \$626 debt placed for collection (SOR ¶ 1.g: Item 6 at 2); a \$545 account placed for collection (SOR ¶ 1.h: Item 6 at 2); a \$498 charged-off credit-card account (SOR ¶ 1.i: Item 6 at 2); a \$158 cable television account placed for collection (SOR ¶ 1.j: Item 6 at 2); a \$145 utility account that was charged off (SOR ¶ 1.k: Item 6 at 2), and a debt with no balance alleged that was charged off (SOR ¶ 1.l: Item 6 at 3)

In her response to the SOR, dated August 14, 2015. Applicant states that she consolidated her student loans in different groups with the exception of the debt alleged in SOR ¶ 1.c. She claims that her loans are no longer in delinquent status and she is working to correct this on her credit report. She provided statements of three student loan accounts which indicate the first payment is due on August 15, 2015. She did not provide any proof that she made the first payment. It is unclear whether the three student loan accounts in question are the same as the student loan accounts alleged in SOR ¶¶ 1.a, 1.b, and 1.d. Applicant intended to pay the debt alleged in SOR ¶ 1.k on September 19, 2015 and the debt alleged in SOR ¶ 1.j on October 16, 2015. Aside from the student loans, she hopes to resolve all of her debts by 2017. (Item 2)

Applicant states that she is taking credit counseling classes and is taking charge of her finances. She is not living above her means. She is just catching up on past debts and not incurring new debts. She is teaching her daughters money management so they will be responsible adults. (Item 2 at 4)

In her response to the FORM, dated October 2, 2015, Applicant again says she has taken steps to pay off her debts. The three student loans alleged in SOR ¶¶ 1.a, 1.b, and 1.d are consolidated. She consulted a consumer credit counseling program and consolidated four of her collection accounts into a debt repayment program. She entered into an agreement on October 2, 2015. It is unclear which four debts alleged in the SOR are included in the repayment agreement because the listed creditors in the repayment agreement are different from the debts alleged in the SOR. A reasonable inference is that the debts were transferred to other collection agencies. Based on the similar balances of the debts it appears the debts might be SOR ¶¶ 1.f – 1.i. (Item 7) Applicant also provided a receipt indicating she paid \$292 towards a student loan on September 18, 2015. (Item 7 at 2)

Applicant mentions again that she is teaching her children to live on a budget without applying for loans or borrowing money from family and friends. Her goal is to be debt free by 2017. She will continue to make payments as scheduled. (Item 7)

The status of the delinquent debts are:

SOR ¶¶ 1.a, 1.b, and 1.d: Student loans with respective balances of \$5,641, \$5,263, and \$1,526. Applicant claims the accounts are now current and they are now consolidated. In her response to the SOR, she provided statements of the Repayment Schedule of three different student loans with balances of \$1,434.79, \$5,028.20, and \$5,388.79. The first monthly installment for each account was to begin on August 15,

2015. It is unclear if these are the same student loans. Applicant provided a receipt that a \$292 payment was made on September 18, 2015. It is unclear whether she has continued to make timely payments. (Item 2 at 5-7; Item 7 at 5)

SOR ¶ 1.c: \$2,210 charged-off account owed to an on-line university. Status of repayment is unknown.

SOR ¶ 1.e: \$1,166 charged-off account. Status of account is unknown.

SOR ¶ 1.f: \$915 debt owed to townhouse community placed for collection: Debt appears to have been included in a debt-repayment plan on October 15, 2015. There is no evidence that Applicant is making regular payments towards the debt-repayment plan. (Item 7 at 2)

SOR ¶ 1.g: \$628 account placed for collection: Debt appears to have been included in a debt-repayment plan on October 15, 2015. There is no evidence that Applicant is making regular payments towards the debt-repayment plan. (Item 7 at 2)

SOR ¶ 1.h: \$545 account placed for collection: Debt appears to have been included in a debt-repayment plan on October 15, 2015. There is no evidence that Applicant is making regular payments towards the debt-repayment plan. (Item 7 at 2)

SOR ¶ 1.i: \$498 charged off credit card account: Debt appears to have been included in a debt-repayment plan on October 15, 2015. There is no evidence that Applicant is making regular payments towards the debt-repayment plan. (Item 7 at 2)

SOR ¶ 1.j: \$158 cable-television account placed for collection: In her Answer to the SOR, Applicant expressed her intent to pay this debt on October 16, 2015. No proof was provided that this debt was paid. (Item 2 at 4)

SOR ¶ 1.k: \$145 utility bill placed for collection. In her Answer to the SOR, Applicant expressed her intent to pay this debt on September 18, 2015. No proof was provided that this debt was paid. (Item 2 at 4)

SOR ¶ 1.l: a charged-off account with an unknown balance: It appears this account is a duplicate of the debt alleged in SOR ¶ 1.e. I find for Applicant with regard to this debt.

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 encountered financial problems since about 2013. The SOR alleges \$14,640 in student loan debt and seven consumer debts with a total balance of \$4,055. Both AG ¶19(a) and AG ¶19(c) apply.

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); and

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

AG ¶ 20(a) does not apply. Applicant has incurred delinquent debt for about three years. She just recently began to resolve her debts. It is too soon to conclude that she will meet the terms of her repayment agreements.

AG ¶ 20(b) does not apply because Applicant did not provide information about whether circumstances beyond her control contributed to her financial problems. Applicant suffered no periods of unemployment. While Applicant is a single mother who is provided sporadic child support, she has lived with this issue for a long time. Applicant is given partial credit in that she is now attempting to deal with her financial situation after neglecting it for several years. She is beginning to act responsibly towards her financial obligations.

AG ¶ 20(c) partially applies in that Applicant sought out financial counseling. However, it is too soon to conclude that her financial situation is now under control.

AG ¶ 20(d) partially applies because Applicant demonstrated she made a good-faith effort towards bringing three of her student loans current, and entered into a debt-repayment agreement which included four of her accounts. It is unclear which of the four accounts in the SOR are included in this agreement. Based on the balance owed, they appear to be the debts alleged in SOR ¶¶ 1.f – 1.i. Applicant recently entered into both repayment agreements. A question remains as to whether she will follow through with the payments. Applicant claims to have paid the debts in SOR ¶¶ 1.j and 1.k. She provided no proof that these debts were paid. The debts alleged in SOR ¶¶ 1.c, 1.e, 1.j and 1.k remain unresolved. While Applicant is beginning to make a good-faith effort towards resolving her delinquent debts, it is too soon to conclude that she will be successful.

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 and facts that would mitigate financial considerations security concerns. While Applicant provided evidence that she recently began to resolve her delinquent accounts, she did not provide evidence that she is making timely consistent payments towards her repayment agreements. She did not provide any information about her current monthly income and monthly budget. It is unknown whether she has sufficient income to meet her financial obligations including her repayment agreements. Applicant did not mitigate the concerns arising from financial considerations.

The determination of an individual's eligibility for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating to the evidence presented. Under Applicant's current circumstances, the granting of a security clearance is not warranted. In the future, if Applicant meets the terms of her repayment agreements and establishes a track record of resolving her delinquent debts, she may well demonstrate persuasive evidence of her security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's employment record. I considered she is a single mother of two teenage daughters. While Applicant is taking action towards resolving her delinquent accounts, it is too soon to conclude that her financial situation will remain under control. In the future, she may be able to demonstrate of track record of resolving her financial obligations. It is too soon to make this conclusion at this point. 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.k:	Against Applicant
Subparagraph 1.l:	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