



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



In the matter of:)	
)	
)	ISCR Case No. 15-05793
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

June 15, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had her wages garnished in April 2010 and July 2014; had delinquent tax debts in 2010 and 2011; and violated her company's policy regarding misuse of her corporate credit card in 2009. Applicant failed to present sufficient mitigating evidence. Eligibility for access to classified information is denied.

Statement of the Case

On February 16, 2015, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On December 30, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

On January 25, 2016, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 16, 2016, scheduling the hearing for April 4, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on her own behalf and presented Applicant's Exhibits (AE) A through D. Department Counsel had no objections to AE A through AE D, and they were admitted. The record was left open for receipt of documentation until April 18, 2016. Applicant submitted seven additional exhibits, marked AE E through AE K. Department Counsel had no objections to AE E through AE K and they were admitted. DOHA received the transcript of the hearing (Tr.) on April 12, 2016.

Findings of Fact

Applicant is 47 years old. She has been employed by a Government contractor since 1987, although she was laid-off in 2003 by her employer for an undisclosed period of time. She has never married and has one adult daughter. She is enrolled in a master's degree program. (GE 1; GE 3; AE A; AE B; Tr. 49.)

As listed in the SOR, Applicant is alleged to have had her wages garnished in April 2010 and July 2014; had delinquent state tax debts in 2010 and 2011; and to have violated her company's policy regarding misuse of her corporate credit card in 2009. Applicant admitted all of the items alleged in SOR ¶¶ 1.a through 1.f. Her debts are identified in the credit reports entered into evidence. (Answer; GE 4; GE 5; GE 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant's wages were garnished beginning July 2014 for the total amount of \$11,090.98, as alleged in SOR ¶ 1.a. Applicant testified that this debt was related to a condo she rented in 2010. She claimed that her initial check to rent this property, in the approximate amount of \$3,200, was mistakenly "shredded" by the management company and that she was requested to issue another check several months after her move-in date. However, she had not monitored her account to see if that check had cleared and subsequently spent those funds. She was unable to repay this debt and was evicted. The management company obtained a judgment against her, and her wages were garnished to repay the judgment. This debt was satisfied through the garnishment in April 2015 as reflected by Applicant's most recent credit report and her pay stubs. (GE 6; AE I; Tr. 36-39.)

In November 2011 Applicant was issued a tax levy in the amount of \$281 relating to unpaid vehicle registration, as alleged in SOR ¶ 1.b. Applicant testified she paid this debt, but failed to present documentation to substantiate this claim. (Tr. 51-52.)

As identified in SOR ¶¶ 1.c through 1.e, Applicant's employer received three garnishment orders to satisfy tax levies filed against Applicant, in the amounts of \$425, \$881.26, and \$987.65. Applicant testified that she incurred these debts by withdrawing

funds prematurely from her 401K savings plan in order to attempt to pay the mortgage on a home she purchased in 2006. She purchased the home in 2006 with her former fiancé, who lost his business due to the economic downturn in 2007. She claimed that she resolved all of these debts. She indicated the smaller debts were paid directly to the state, but that the largest debt was resolved through garnishment. She presented documentation that appears to show she resolved a “Legal OrdTax [sic] Levy” in January 2014, but neither the creditor nor the specific debt are identified. I am unable to discern, from the documentation provided by Applicant, the status of each of these individual debts. These debts remain unresolved. (AE I; Tr. 27-29, 39-40, 51.)

In March 2009 Applicant was issued a corrective action memo and received five days off without pay due to her violation of her company’s policy regarding misuse of a company credit card. Applicant explained that she reserved a rental car using her corporate account so that she would get a discount. She had planned to use her personal credit card to pay for the vehicle, but when she returned the car, there was only a key-drop box and no live attendant. As a result, the rental vehicle was charged to her corporate card, which was on file with the rental car agency. (GE 2; Tr. 44-48.)

Applicant presented documentation that shows she is current on her credit card bills. (AE F; AE K.) Her current budget shows that she should have \$2,248 left at the end of the month after paying on her liabilities.¹ (AE G.) However, she testified that she has “nothing left” at the end of the month. (Tr. 55.) Applicant has had no formal financial counseling. (Tr. 52.)

Applicant received her company’s 25-year service award in 2014. (AE A.) She has good grades in her master’s degree program. (AE B.) Her work performance evaluations reflect she does an “outstanding job.” (AE D.)

Policies

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply 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.

¹ Applicant’s budget from October 2009 to August 2015 reflected a surplus of only \$606 a month. (AE H.)

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant has a history of financial indebtedness documented by the credit reports and incident history reports in evidence. She has not addressed her delinquencies, despite allegedly having a surplus of \$600 per month from 2010 to 2015. Further, her creditors were forced to take legal action against her and seek repayment through involuntary garnishment. Additionally, she was also reprimanded by her employer for misuse of her company credit card. The evidence raises security concerns under the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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.

Applicant's financial problems are recent. Her \$11,090 judgment was only resolved in 2015, through involuntary garnishment. Further, she failed to present sufficient documentation to show the tax liens are resolved. She has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant blamed her financial problems on her former fiancé's business loss and the economic downturn in 2007. These may have been a circumstance beyond her control. However, she failed to act responsibly under the circumstances, and did not address her debts in a timely manner. Mitigation under AG ¶ 20(b) has not been fully established.

Applicant provided no evidence of financial counseling. There are no clear indications that her financial problems are being resolved or are under control. Her history of financial mismanagement, whether it was her misuse of her corporate credit card or her failure to resolve tax debts, shows she exercises questionable financial judgment. The Appeal Board has held: "On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor."² Further, her documentation failed to support her claim that her tax liens have been fully resolved through garnishment. Mitigation under AG ¶¶ 20(c) and 20(d) have not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant has not provided any evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant has

² ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009).

been a dedicated employee, serving her employer for over 25 years. She has a reputation for outstanding work. However, she is a mature adult and responsible for her choices and financial obligations. Her financial decisions since 2009 reflect that she lacks the responsibility, judgment, and trustworthiness required to hold a security clearance. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

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 through 1.f:	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.

Jennifer I. Goldstein
Administrative Judge