



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-04596
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

03/18/2016

Decision

HOGAN, Erin C., Administrative Judge:

On October 21, 2014, 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 November 10, 2014, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on April 14, 2015. Applicant timely responded to the FORM and provided additional documents. Her response to the FORM and attached documents are admitted as Item 5. Department Counsel indicated no objection to Applicant's Response to FORM on June 5, 2015. (Item 6) The case was assigned to me on March 3, 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 SOR ¶¶ 1.a – 1.d, and denies the allegation in SOR ¶ 1.e. (Item 1)

Applicant is an employee of a DOD contractor seeking to maintain her security clearance. She has worked for her current employer since February 1996. She is a high school graduate. She is divorced and has two children, ages 30 and 15. (Item 2)

On January 10, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). (Item 2) In section 26, Financial Record – Delinquency Involving Routine Accounts of the e-QIP, Applicant indicated that she had three delinquent credit cards. A subsequent background investigation revealed that Applicant filed for Chapter 7 bankruptcy in 2007. (Item 3 at 2). Applicant also incurred the following delinquent accounts after her bankruptcy discharge: a \$6,764 charged-off credit card account (SOR ¶ 1.b: Item 3 at 7; Item 4 at 1, 3); a \$5,847 charged-off credit card account (SOR ¶ 1.c: Item 3 at 7; Item 4 at 4); a \$4,555 charged-off credit card account (SOR ¶ 1.d: Item 3 at 7; Item 4 at 2); and a \$240 account that was placed for collection. (SOR ¶ 1.e: Item 3 at 11)

In her Response to the SOR Applicant explains that she filed for Chapter 7 bankruptcy after her divorce. She admits the debts alleged in SOR ¶¶ 1.b – 1.d, but believes the balances are less than alleged. Applicant denies the debt alleged in SOR ¶ 1.e. When she purchased the item, she was told it would cost \$12. The company she purchased the item from later told her it was \$240. She claims she returned the item. Applicant states that she attempted to resolve her debts, but the creditors would not work with her. (Item 1)

In her Response to FORM, Applicant states that she is a single mother. She needs a security clearance so that she can keep her job and receive a raise. She has worked for the same company for over 18 years. She is a good, honest, trusted person who does not make much money. She provided a document which indicates she attended mediation regarding the debt alleged in SOR ¶ 1.d on February 16, 2015. She agreed to pay \$50 a month towards this debt beginning on April 15, 2016, until it is paid in full. Applicant did not mention the status of the other debts alleged in the SOR. (Item 5)

Applicant 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 encountered financial problems after her divorce which resulted in her filing for Chapter 7 bankruptcy in 2007. After her bankruptcy discharge, she continued to incur delinquent debts. The SOR alleges four delinquent accounts with an approximate total of \$17,406. Applicant has a history of not being able to pay her bills.

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.

AG ¶ 20(a) does not apply. Applicant did not incur her recent delinquent accounts under circumstances that are unlikely to recur. She admits to using the three credit card accounts. She was unable to keep up with the payments which resulted in more interest and penalties added to the balance on the debts.

AG ¶ 20(b) applies with respect to Applicant's Chapter 7 bankruptcy filed in 2007. Her divorce contributed to her financial problems leading her to file Chapter 7 bankruptcy. However, I cannot conclude that Applicant's recent delinquent credit card accounts were the result of circumstances beyond her control.

AG ¶ 20(c) does not apply. There is no evidence that Applicant attended financial counseling. Applicant entered into a repayment plan with the creditor of one of her delinquent accounts. However, the repayment plan will not begin until April 2016. Applicant provided no information about her financial budget, so I am unable to conclude that she is capable of meeting the terms of the repayment plan. Three other delinquent accounts remain unresolved. Applicant's financial problems are ongoing and uncertain.

AG ¶ 20(d) partially applies because Applicant entered into a repayment agreement for the debt alleged in SOR ¶ 1(d). The other three delinquent accounts remain unresolved. For this reason AG ¶ 20(d) is given less weight.

AG ¶ 20(e) may apply with regard to the debt alleged in SOR ¶ 1(e). However, Applicant did not provide sufficient information about the nature of the debt. She did not provide proof that she returned the product to the creditor. She did not provide

information as to whether she formally disputed the debt and what actions were taken to resolve the issue.

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 provided evidence that she agreed to a payment plan for one of the debts, the remaining four debts remain 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. I considered Applicant's employment record. 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.e:

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.

ERIN C. HOGAN
Administrative Judge