



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



In the matter of:

)	ISCR Case No. 14-04753
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

12/10/2015

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On March 11, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on April 20, 2014. (Item 6) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On January 6, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken 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* (January 2, 1992), as amended

(Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on February 20, 2015. She denied nine of the ten allegations of delinquent debt. She admits one debt. (SOR 1.d) Two of the denials were because Applicant claimed judgments had been paid. (SOR 1.a and 1.b) Five of the denials were because Applicant claims the debts were not her debts. (SOR 1.c, 1.e, 1.h, 1.i, and 1.j) She denied one debt as not her debt because she was only a co-signer on the debt (SOR 1.f), and another debt because she is current with payments under a payment agreement. She elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on June 9, 2015. Applicant received a complete file of relevant material (FORM) on August 5, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a reply to the FORM. I was assigned the case on December 1, 2015.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 6) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and she could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the Personnel Subject Interview summary. Applicant did not respond to the FORM, so she waived any objection to the admissibility of the Personal Subject Interview summary. I will consider information in the Personal Subject Interview in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 43 years old. She received a bachelor's degree in 1997. She has been employed as a food service worker and a postal clerk by a DOD contractor since 2006. She has two children. (Item 3, e-QIP, dated March 11, 2014; Item 6, Personal Subject Interview, dated April 10, 2014)

The SOR lists, and credit reports (Item 4, dated November 28, 2014, Item 5, dated March 22, 2014; and Item 7, dated June 9, 2015) confirm the following delinquent debts for Applicant: a judgment for \$1,902 (SOR 1.a); a judgment for \$2,358 (SOR 1.b); a debt in collection for \$1,534 (SOR 1.c); a debt in collection for \$413 (SOR 1.d); a credit union debt in collection for \$782 (SOR 1.e); a charged off debt for \$10,336 (SOR 1.f); a debt in collection for \$1,280 (SOR 1.g); a medical debt in collection for \$439

(SOR 1.h); a medical debt in collection for \$350 (SOR 1.i); and a debt in collection by a city for \$182 (SOR 1.j). The total amount of the alleged delinquent debt is \$19,575.

Applicant admits only one of the debts. While she denies the other nine debts, all are listed on at least one of the credit bureau reports as her debts. She states that the judgment at SOR 1.a has been paid, but she did not provide any documents to establish the payment. The latest credit bureau report (Item 7) shows the debt is still not satisfied. Applicant did not present any documents to show steps taken towards the resolution of the debts at SOR 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, 1.i, and 1.j. Applicant claims she is not responsible for the debt at SOR 1.f since she only co-signed for the loan. It is well settled that the co-signer of a debt is responsible for the debt. Applicant did not present any documents to show any effort to resolve or resolution of the 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 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, 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 for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising 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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or 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 his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay 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 finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in her credit reports. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

I considered the following Financial Consideration Mitigating Condition under 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;

(b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the 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 provided documented proof to substantiate the basis for the dispute or provide evidence of actions to resolve the issue.

None of the mitigating conditions apply. Applicant's unpaid debts are a continuous course of conduct and thus current. Applicant did not present any reasons for not resolving her delinquent debts, except for her denial of or lack of knowledge of the debts. There are no indications that the circumstances of the debts are unusual or were caused by conditions beyond her control. Applicant has not shown any actions taken to resolve her financial problems. The debts have not been paid, and Applicant has not established a plan to pay the debts. Her sole financial action was to deny the delinquent debts were her debts.

Applicant has not presented a reasonable plan to assume responsibility for her debts or to resolve her financial problems. She only acknowledged one debt. With evidence of delinquent debt and no documentation to support responsible management of her finances, it is obvious that her financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. Based on the identified debts and the failure to make arrangements to pay her debts, it is clear that Applicant has not been reasonable and responsible in regard to her finances. Her failure to act reasonably and responsibly towards her finances is a strong indication that she will not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Applicant presented no evidence of any action she has taken to resolve her delinquent debts. She has not provided sufficient, credible documentary information to show reasonable and responsible action to address delinquent debts and to resolve financial problems. Applicant has not demonstrated responsible management of her finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation.

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: 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge