



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



In the matter of:)
)
) ISCR Case No. 14-05512
)
Applicant for Security Clearance)

Appearances

For Government: Braden F. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. The Statement of Reasons (SOR) alleges she is delinquent on six collection accounts, one charged-off account, a judgment, and four tax liens. Her delinquent accounts total approximately \$34,000. There is no showing of payments having been made on the debts. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 9, 2014, the DoD issued a Statement of Reasons detailing security concerns. On

¹ 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 within the DoD on September 1, 2006.

December 29, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated April 9, 2015. The FORM contained seven attachments (Items). On May 28, 2015, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response was due June 27, 2015. No material was received. On July 30, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admitted owing all nine delinquent accounts listed in the SOR.² I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 50-year-old supply technician who has worked for a defense contractor since November 2012³ and seeks to obtain a security clearance.⁴ (Item 4) Applicant provided no information about her duty performance and provided no character reference letters.

In 2008, a house fire destroyed Applicant's financial records. (Item 6) In 2009, she was notified by the Internal Revenue Service (IRS) that since no federal income tax return had been received, returns were filed on her behalf by the IRS. (Item 6) The filing resulted in \$7,000 being owed in federal tax. (Item 6) The IRS had filed the returns showing her husband's gross income from his business as a self-employed builder and filed the return claiming no business deductions. (Item 6) She asserted thereafter her husband filed returns for those two years.

In 2010, the IRS notified Applicant that an audit had been conducted on the 2007 and 2008 returns and \$10,535 (SOR1.e) was owed. (Item 6) Her bank account was levied on twice, first, in the amount of \$1,500 and again in the amount of \$800. (Item 6) In January 2013 and February 2013, she completed a Personal Subject Interview (PSI). In her PSI, she indicated she would attempt to file separately because sufficient funds had been withheld from her income. If that were not possible, she would make arrangements with the IRS to pay the tax. (Item 6) In her December 2014 SOR Answer, she again stated she hoped to file as "married filing separately" on her tax returns and hoped to do so by April 2015. (Item 3)

² The SOR lists delinquent obligations in paragraphs 1.a to 1.k and also paragraph 1.m. It does not list a paragraph 1.l. (Item 1)

³ In Applicant's SOR Answer, she indicated she did not want to lose her job of 14 years. (Item 3)

⁴ In January 2002, Applicant had clearance. (Item 6) In her January and February 2013 Personal Subject Interview, she states she must have had a clearance of some kind in order to work at her jobs. (Item 6)

In 2012, Applicant was contacted by a collection agency attempting to collect \$4,279 (SOR 1.i). (Item 6) In her PSI, she indicated she had entered into an agreement to pay \$200 monthly on the debt. At that time, she did not know if this delinquent account had been reduced to a judgment. (Item 6) During her PSI, she had no knowledge of: a \$4,793 (SOR 1.g) tax lien; a \$6,399 (SOR 1.h) tax lien; a \$304 (SOR 1.b) collection account; a \$287 (SOR 1.j) medical collection account; a \$1,347 (SOR 1.k) medical collection account; or a \$52 (SOR 1.m) medical account. (Item 6) She had no knowledge of three additional collection accounts not listed in the SOR. For each of these delinquent accounts she said she intended to find out about the debts and make payment arrangements, if she owed the debts. (Item 6)

In Applicant's January 2013 Electronic Questionnaires for Investigations Processing (e-QIP), she indicated she had not filed her 2007 income taxes due to a house fire. (Item 4) She indicated she was making \$200 monthly payments on a \$4,279 debt (SOR 1.i). (Item 4)

Applicant's January 2013 credit report lists the \$4,279 judgment (SOR 1.j), six accounts being paid as agreed, and eight collection accounts. (Item 5) That credit report lists a \$10,535 federal tax lien (SOR 1.e) filed against Applicant in August, 2011. (Item 5) Additional tax liens were filed against her: \$6,399 (SOR 1.h) filed in May 2005 and \$8,793 (SOR 1.g) filed in April 2005. (Item 5, 6) These three federal tax liens total \$25,667. Applicant admitted that a \$31,601 (SOR 1.f) tax lien was filed against her in September 2014. The FORM contains no evidence of that filing. It does not appear on her October 2014 credit report. (Item 7)

At the time of Applicant's January/February 2013 PSI, she stated her household income had been reduced by 80 percent due to the economy and her husband's profession as a builder. She indicated she had not received financial counseling.

The FORM repeatedly informed Applicant that she needed to submit documentation supporting her assertion she had made arrangement with the creditors or had made payments on her delinquent accounts. (FORM) In her SOR Answer, she indicated she had paid \$200 to \$500 several times on the debt listed in SOR 1.a (\$1,454). (Item 3) She indicated that she had arranged to make three payments on the \$304 debt (SOR 1.b) and that it was to be paid in full by April 2015. She indicated her wages were being garnished to pay the IRS tax liens. She also stated she hoped to set up automatic withdrawals with the IRS. (Item 3) She stated she hoped to have all tax returns filed and to take action to resolve the IRS debt by April 2015. No documentation was received. She indicated she was paying or making arrangements with the creditors of her delinquent medical accounts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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 to obtain 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.

Section 7 of Executive Order (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant owes approximately \$34,000 for an unpaid judgment, six collection accounts, one charged-off account, and three tax liens. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. She has been employed with her current employer since November 2012, but says she has had her job for 14 years. In January and February 2013, she was made aware of the Government's concerns about her delinquent debt. She acknowledged some of her debts and would verify owing other debts. She stated if she owed the debts she would make arrangements to pay the debts. She has provided no documentation showing payment on any of her debts. Even the five smaller debts of approximately \$300 or less remain unpaid. By failing to make payments she has failed to act responsibly under the circumstances.

In early 2013, during Applicant's PSI, she stated she intended to contact the IRS and arrange to file as married filing a separate return and arrange to pay her federal tax obligation. In December 2014, almost two years later, she again stated she intended to contact the IRS and arrange to file as married filing a separate return. She indicated she hoped to have arrangements made by April 2015. In May 2015, she received the FORM and informed she could submit documentation as to the status of her delinquent accounts. No documents were received.

Applicant has not acted responsibly in addressing her debts. She provided no evidence she has received credit or financial counseling. She has not demonstrated that her financial problems are under control or that she has a plan to bring them under control. She has not made a good-faith effort to satisfy her debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. There is nothing in the record supporting that the conditions under which the debts were incurred were unusual other than her assertion that the IRS filed their 2007 and 2008 returns for them and failed to take her husband's business expenses from his gross income. Applicant was asked about these obligations starting in January 2013 during her PSI and in her December 2014 SOR. Given sufficient opportunity to address her financial delinquencies, Applicant has failed to act responsibly under the circumstances. Failing to pay the debts casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant states she has held her job for 14 years. She asserted a down-turn in the economy greatly affected her husband's income as a builder. She asserts their household income was reduced by 80 percent. Additionally, in 2008, her home burned, which is a devastating event. These are factors beyond her control. However, she failed to document these assertions.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. Additionally, there is no clear showing that her financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. She claims to have made payment on two debts and asserted one debt was to be paid by April 2015, but provided no documents supporting her claims. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not disputed any of the delinquent debts. She admitted all of the debts.

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. Applicant has failed to document any payment on her delinquent accounts. She has been aware of the Government's concern about her delinquent debts since her January 2013 interview, which was reinforced by the December 2014 SOR. No delinquent debts have been paid and there is no documentation indicating that Applicant has recently contacted her creditors.

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 the financial considerations security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debt. She failed to provide such information, and by relying solely on her paragraphs of explanation in her response to the SOR, she failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of 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, a clearance is not recommended. In the future, if Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her past-due obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.k: Against Applicant

Subparagraph 1.m: 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge