



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



In the matter of:)	
)	
)	ISCR Case No. 12-08577
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On August 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2015. A notice of hearing was issued on December 15, 2015, scheduling the hearing for January 28, 2016. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, but did not submit exhibits at the hearing. I kept the record open until February 16, 2016, and one exhibit (AX A) was entered into the record without objection.

The transcript was received on February 8, 2016.¹ Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted and denied the SOR allegations under Guideline F. She provided explanations for each alleged debt.

Applicant is 49 years old. She graduated from high school and attended college obtaining her undergraduate degree. Applicant is single and has no children. She completed a security clearance application in 2012. (GX 1) Applicant has held a security clearance, but it is not clear for what period of time. She is sponsored for a clearance by a former employer.

Applicant's work as a contractor has been sporadic. Her last full time position ended in 2013. She believes her full time earnings were about \$95,000. (Tr. 36) Contracts were promised for a certain period of time, but ended much sooner and she had no work. She has worked part time for the last five years in a retail store, earning an hourly wage. (Tr. 29) She has continued to seek full time employment. She blames the downturn in the economy for her problems. (GX 2) She states that she had no financial problems before 2008. She had gainful employment from 1996 until 2008. (Tr. 66)

Applicant also had a sick uncle who she helped out financially. When he died she also had to help with funeral expenses.

The SOR alleges 18 delinquent debts, which consist of a delinquent mortgage, past due medical bills, and past due consumer debts. Applicant 's debts originated about 2012. She has provided no documentation to show that any accounts have been resolved.

As to SOR allegation 1.a, Applicant called the bank about the past due account on her mortgage loan in the amount of \$29,363, when her funds were getting low due to her unemployment and underemployment. She applied for a modification in 2009. However, she was already delinquent in her payments. She sought help from a congressman and was told to apply for a HUD program. She explained that while she waited, her delinquency increased with the mortgage. She has not made any payments since 2013. She states that because she has no income, she cannot begin another modification program. (Tr. 48) She still lives in the house.

Applicant submitted the potential conditional loan commitment from 2011 to show that she had indeed tried to contact the lender. (AX G) They had originally sent her the packet for another borrower. She was in constant contact with them via emails. It appears from the documents submitted that her last email was in 2012. However, the

¹An Order to Vacate the March 9, 2016, decision was issued due to documents timely sent by Applicant that were not forwarded to me from the Government. The additional documents are now entered into the record for consideration as AX B-G.

loan modification could not be maintained due to her unemployment, and remains in that status today. Applicant will not be approved for a loan modification until she has a letter stating that she has a full-time employment and an offer letter stating her income.² (Tr. 82)

As to SOR allegation 1.b, Applicant admits the debt but she disputes the amount. The collection account for a wireless company is approximately \$2,897. She believes this is the result of a phone that was stolen from her in 2008. (Tr. 50) She stated that she has not made any attempts to resolve the bill because she does not have the funds.

As to the SOR allegation in 1.c, Applicant at first stated that she did not know who the creditor was. It is a collection account in the amount of \$1,007. The credit report identifies the debt as a local retail company. (GX 3) Applicant states that she does not owe them that amount of money. She disputes the bill.

As to the SOR allegation in 1.d for a charged off account in the amount of \$782, she has not paid the amount. Applicant attributes the nonpayment to unemployment issues. (Tr. 53)

As to the SOR allegation in 1.e for a collection account in the amount of \$247, she believes it is for a cable company. She has made no efforts to resolve the debt, although she admits that she owes the debt.

Several SOR allegations relate to medical accounts that were the result of an automobile accident. Allegations 1.f (\$181), 1.g (\$162), 1.m (\$25), 1.n (\$25), 1.p (\$462), and 1.q (\$256) are affiliated with a 2013 auto insurance claim. Applicant has not paid the debts because she believes the insurance company is responsible. She has not communicated with the doctors or the insurance company and the bills are unresolved. (Tr. 57)

As to the SOR allegation in 1.h in the amount of \$2,350, the 2010 judgment was filed by Applicant's home owners association. She notified the attorney for the association and stated that she had no income to pay the monthly dues. (Tr. 58)

As to the SOR allegation in 1.i, for a collection account in the amount of \$366, Applicant has no idea what the account is. She has not researched the debt.

As to the SOR allegation in 1.j, a charged off account in the amount of \$1,697, she admits having an account with the company, but believes that she owed them no more than \$500. She reiterated that none of her credit card bills were more than \$500, and denies owing this amount. (Tr. 58)

²A telephone conference call was held on May 5, 2016 to ascertain that the documents that Department Counsel did not forward before the record closed in the first decision were correct and that no new documents were included. Applicant maintained that she still had no loan modification in place.

As to the SOR allegation in 1.k for a collection account in the amount of \$1,512, Applicant believes she has had some communications with them but has not made any payments. (Tr. 59)

The SOR allegation in 1.l in the amount of \$2,971, Applicant denies that she owes the amount. She refers to the phones that were stolen. She has not had any communication with them. Applicant believes that the allegation in 1.o is a duplicate of the account in 1.j. She did not produce any documentation to support her belief.

As to the SOR allegation in 1.r for \$1,249 (medical account), she admits the debt but has not resolved it. (Tr. 62)

Applicant emphasized that the debts are not the result of an inability to live within her means or poor self-control. She stated that her priority has been her mortgage and student loans. She states that due to the inconsistent job employment, she has not had money to pay these bills. When she worked, she saved money and used it to pay her mortgage. Her last mortgage payment was in 2013. She states that she paid her utility bills as well. As for the remainder, they have not been paid.

Applicant has not obtained financial counseling. It is not clear how much she earns at this time from her part-time job. She has no savings. She is adamant that she intends to pay her debts. She also believes that she should be granted a clearance based on her excellent references. (Tr. 94)

A former employer wrote a letter of recommendation for Applicant. She states that Applicant is honest and has contributed to the team mission. She also knows that Applicant has helped family members with financial support. (AX A)

Applicant submitted a letter of recommendation from a friend who has known her for 37 years. She describes Applicant as positive, progressive, intelligent, and trustworthy. She has no hesitation in recommending her for a security clearance. (AX B)

The Director of Faith Formation for a catholic church states that Applicant has been a volunteer for the past two years. She is also a substitute catechist for several years. Applicant is described as enthusiastic and energetic. She shares her time willingly with students. (AX C)

A former colleague describes Applicant as a professional who is valuable to government clients. She has excellent communication skills. She is respected by her co-workers. (AX D)

Another colleague states that she has known Applicant for twelve years. He has worked with her on a variety of projects. At one point he was Applicant's supervisor. He states that she has impeccable character and dependability. (AX E)

Applicant submitted a letter from a fellow undergraduate student. He describes her as having good character and respect for authority. She has a sense of responsibility. He supports her for a security clearance. (AX F)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s credit reports confirm delinquent debt, a past-due mortgage account, judgments, and collection accounts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” Applicant still has unresolved financial issues concerning the home loan mortgage. She has not produced any evidence that she has resolved any of the debts in the SOR. Her delinquent debts are unresolved. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant was unemployed or underemployed over the years. She helped some family members financially. Applicant has not made any payments for about two years on her mortgage loan. She has not addressed any of the delinquent debts alleged in the SOR. She presented documentation concerning a 2011 potential loan modification in the past. However, this modification is not in place due to her lack of full-time employment. She has not shown attempts to settle debts or make small payments. There is also no documentation concerning the medical accounts and the insurance claim. She did not act responsibly under the circumstances, with the possible exception of the mortgage loan.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. When Applicant was fully employed in 2012 to 2013 and earning a salary, she did not make any efforts to pay some bills. She has no financial plan in place. FC MC 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) does not apply.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 49 years old. She is single and has no children. She has had sporadic employment as a contractor since 2008. She made efforts to find work and has taken a part-time job where she has worked for the past five years. Her unemployment and underemployment contributed to her financial problems. She submitted excellent letters

of recommendation. Despite the fact that she has provided some documentation from 2011 concerning a potential loan modification, it is not in place. She has not paid on her mortgage loan for several years. She admits that she has not resolved any delinquent debts on the SOR. She has not officially disputed any debts. She has no plan in place to resolve her debts.

Applicant did not persuade me that she refuted or mitigated the Government's case concerning the financial considerations security concerns. She has not carried her burden of proof. Any doubts must be resolved in the Government's favor.

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 :	AGAINST APPLICANT
Subparagraphs 1.a-1r:	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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge