



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



In the matter of:)	
)	
)	ISCR Case No. 12-09279
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On December 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) 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 review based on the written record in lieu of a hearing. The case was assigned to me on October 28, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated June 19, 2015.¹ Applicant received the FORM on July 29, 2015. Applicant did not submit any response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted six items for the record.

Findings of Fact

In her answer to the SOR, Applicant admitted the SOR allegations (1.a through 1.o) under Guideline F. She also provided explanations.

Applicant is 41 years old. She is single and has one son. Applicant attended college, but she has not obtained an undergraduate degree. She served in the U.S. Navy from 1999 to 2007, receiving an honorable discharge. (Item 3) Since 2010, Applicant has been employed with her current employer. She completed an application for a security clearance on May 18, 2012. (Item 3)

Financial

The SOR alleges 14 delinquent debts totaling approximately \$134,000. The majority of the debts are student loans. (Item 4 and 5) In addition, she filed a Chapter 13 bankruptcy petition in 2013, which listed over \$116,000 in liabilities. (Item 6) In her answer to the SOR, Applicant stated that she is aware of her debts. She noted that she overextended herself but that she has a bankruptcy plan so that this situation with debt would not occur again. She explained that when the bankruptcy plan is over in 2018, she will resolve any other debts that she may have. She reported that she has worked for one contractor for more than eight years.² She stated that she would never do anything to jeopardize her position. (Item 2)

As to the bankruptcy plan, Applicant's required monthly payments are \$706. She did not provide any evidence of payments made to the plan. Schedule E of the plan listed \$2,000 for federal tax liability. (Item 6)

Applicant disclosed on her 2012 security clearance application that her wages were being garnished for various student loans from 1997, which amounted to about \$38,000. She also listed an automobile loan in the amount of \$7,714, that was being garnished from her pay. (Item 3)

The record is silent as to any extenuating circumstances that caused the delinquent student loans. The credit reports list additional debts that do not appear on the bankruptcy petition. The status of these debts is not clear from the record.

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

²She was unemployed from January 2007 to March 2007 and from March 2005 to June 2005.

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.

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

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).

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.*

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 incurred delinquent debt in the approximate amount of \$134,000. Her admissions and credit reports confirm the delinquent debts. She filed a Chapter 13 bankruptcy petition in 2013. 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 difficulty make it difficult to conclude that it occurred "so long ago." Applicant filed for bankruptcy in 2013, but there is no evidence of any payments that have been made. The status of the bankruptcy is not clear. There are other unresolved delinquent debts as well. 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.

Financial Considerations Mitigating Condition (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 has worked since 2008, after some unemployment earlier in her career. She did not present any information that would allow this mitigating condition to apply. Although she filed a Chapter 13 bankruptcy plan in 2013, there is no record of any payments made. She did not produce any documentation that she acted responsibly under the circumstances. She also has additional debts not on the petition.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. There is some indication that she agreed to a garnishment in her 2012 security clearance application for several student

debts. The filing of a Chapter 13 bankruptcy petition in 2013 is a way to resolve her debts, but there is no information to show that she has made any payments. The record is silent as to financial counseling. 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 because there are no indications her financial problems are being resolved or under control.

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.

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 a 41-year-old single mother. She has attended college classes for many years, but has not obtained a degree. She has outstanding student loans that she has included in a 2013 bankruptcy plan. She did not provide any information as to the cause of her inability to pay her student loans. She did not present evidence that she is making her monthly payments to the bankruptcy plan. She has other delinquent debts that do not appear in the petition. She has not provided any information to carry her burden of mitigation in this case.

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-o:	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