



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-10934

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

HOWE, Philip S., Administrative Judge:

On May 9, 2012, Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP). On May 21, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR in writing on June 23, 2015. Applicant requested her case be decided on the written record in lieu of a hearing.

On July 29, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was

provided to the Applicant on August 26, 2015. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on September 3, 2015.

Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on October 3, 2015.

Department Counsel submitted seven Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on June 28, 2012. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. She objected to its use. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

The Department Counsel amended the SOR to correct a typographical error by changing the case heading from No. 12-08151 to 12-10934. (FORM, page 2)

I received the case assignment on October 19, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

The SOR alleges five delinquent debts totaling \$71,223. Applicant asserts two debts are paid and three debts are being worked on toward resolution. Therefore, Applicant denied the allegations in Subparagraphs 1.b and 1.e and admitted the three other allegations (Subparagraphs 1.a, 1.c, and 1.d.) (Items 1, 2; Answer; Response)

Applicant is 57 years old. She is married and has three children. She has a bachelor's degree. Applicant served in the U.S. Army and retired as an E-8 in 2005 after 23 years of service. She worked for a defense contractor for the past 10 years. (Items 2, 3)

Applicant's Response included a September 28, 2015 credit report. It lists her debts and the current status as of that date. Her total delinquent payments are \$71,223 and the mortgage total is \$377,774 on the three houses she owns in two states. (SOR; Response)

Applicant owes a mortgage lender \$22,466 in past-due payments on a loan balance of \$151,188 on House 1 (Subparagraph 1.a). Applicant owned this house when stationed at one military installation. Applicant rented House 1 to tenants after her transfer to another base for about one year, but then she could not find new tenants after the first lessees departed. She tried to rent House 1 for over a year. She was trying to arrange a short sale of House 1 but it has not been completed by the date of the SOR. Then, in her Response she submitted a letter from the bank lender dated April 3,

2015, stating her short sale was approved. Applicant planned a short sale on June 2, 2015. Applicant's Response credit report of September 2015 lists this debt as number 31 and shows it was legally paid for less than the full amount. The account numbers in the SOR and on the September 2015 credit report are the same. The debt delinquency dates from 2013. Her Response includes the settlement document for the sale of House 1 in August 2015. Applicant resolved the mortgage debt. (Items 1-3, 5-7; Answer; Response)

Applicant purchased another house (House 2) when transferred to another base in the same state and could not sell House 1. Meanwhile, the Department's FORM alleges she spent money on several credit cards to refurbish House 2 including the installation of a pool. In her September 2015 Response, Applicant objected to the Department Counsel's statement that she incurred credit card debt to refurbish House 2. She stated she refinanced the House 2 to make those changes including the installation of a pool. (Items 1-3, 5-7; Answer; Response)

Applicant owed a bank on a mortgage account that is past due more than 120 days in the amount of \$25,550 with a loan balance of \$226,586 (Subparagraph 1.b). This debt is owed on House 3 which Applicant purchased in another state different from the location of the first two houses. She was stationed there before moving to her last two military assignments. Her Answer states this house was sold on March 30, 2015. She contends she does not owe the bank any money. This debt dates from 2013. She resolved this debt. (Items 1-3, 5-7; Answer; Response letter of September 19, 2015, referring to No. 19 on Excel spreadsheet attached)

Applicant owes a telephone company \$1,388 (Subparagraph 1.c). Applicant's Answer admitted the debt and stated she arranged to pay this debt in five installment payments of \$212.93 payable biweekly starting June 19, 2015, and completed on August 14, 2015. This debt dates from 2014. Her Response's credit report lists this debt as Number 28 and that it was legally paid for less than the balance owed. Applicant included a document from the collector showing the debt was settled in full. This debt is resolved. (Items 1-3, 5-7; Answer; Response)

Applicant owes a lending company \$15,764 (Subparagraph 1.d). Her Answer states this personal loan was needed to provide money to support her family when her houses were not selling. She states the last two payments of \$404.62 were made on April 13 and 27, 2015. This debt originally became due in 2014. Her Response's credit report lists this debt as Number 24 on the list and shows it was "charged off," and not paid in any way. Her Response shows on her spreadsheet that she needs to make arrangements to pay the debt. Her Response statement admits this debt is the only one unpaid. This debt is not resolved. (Items 1-3, 5-7; Answer; Response)

Applicant owed a credit card company \$6,055 (Subparagraph 1.e). Applicant's Answer states she settled the debt for \$4,335.54. Her Response included a document

showing the debt was paid in July 2013. This debt is resolved. (Items 1-3, 5-7; Answer; Response)

Applicant did not submit any documentation that she has participated in credit counseling or budget education. Her Response did include two documents from a debt resolution company but no detailed information about what she paid it or what action they took to resolve her debts. She did not offer any evidence concerning her family income so her ability to repay debts could be evaluated. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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 are useful 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2013 to the present, Applicant accumulated five delinquent debts, totaling \$71,223. The mortgages she owed that were unpaid or unresolved when the SOR was issued total \$377,774.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only two mitigating conditions have partial applicability.

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20 (c) would apply if there were clear indications her financial delinquencies are being resolved or are under control. Applicant has paid four of the five delinquent debts. She has one \$15,764 debt to resolve. This mitigating condition applies to four of the five debts.

AG ¶ 20 (d) applies to the same four debts (Subparagraphs 1 a. to 1.c, and 1.e.) Only the debt in Subparagraph 1.d is unresolved. This mitigating condition applies partially.

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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She took action to resolve her delinquent debts, except one debt for \$15,448. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on any of her delinquent debts during the past two years until the SOR was sent to her.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c, 1.e:	For Applicant
Subparagraph 1.d:	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.

PHILIP S. HOWE
Administrative Judge