



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



In the matter of:)
)
) ISCR Case No. 13-00438
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

April 3, 2014

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on June 21, 2013. On October 17, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. 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 after September 1, 2006.

Applicant acknowledged receipt of the SOR soon thereafter. She answered the SOR in writing (Answer) on November 5, 2013, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on December 31, 2013. Applicant responded to the FORM (Response) on February 24, 2014. Department Counsel had no objection, and the documents are entered into evidence. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, dated November 5, 2013, Applicant admitted the factual allegations in Paragraphs 1.b.~1.x. of the SOR, with explanations. She denied the factual allegations in Paragraphs 1.a., and 2.a. of the SOR.

Guideline F - Financial Considerations

Applicant is a 48 year old, “supporting the Warfighter since 2006.” (Item 5 at page 5, and Response at page 1.) It is alleged that she has 23 past due debts, as supported by credit reports from July of 2013 and December of 2013. (Items 7 and 8.)

1.a. Applicant filed for the protection of a Chapter 13 bankruptcy in August of 2005. (Item 6 at page 1.) The filing was dismissed in January of 2006, as she “failed to attend two scheduled . . . meetings of the creditors,” and “failed to begin payments within thirty days of filing the plan.” (Item 6 at page 6.) She denies the allegation claiming merely “we did not go through with” it. (Answer at page 2.) This allegation is supported by court documents; and as such, despite Applicant’s averment, I find it was filed and dismissed as alleged.

1.b. It is alleged that Applicant has a judgment pending against her in favor of Creditor B in the amount of \$331. This judgment has been satisfied by Applicant, as evidenced by her January 2014 credit report. (Response at pages 3 and 6.)

1.c. It is alleged that Applicant has a past-due debt to Creditor C in the amount of \$4,849. She has engaged the services of a debt counseling service (Answer at pages 1 and 2); and through them, Applicant is making monthly payments of \$66 towards this and to two other, much smaller, alleged past-due debts, 1.q. and 1.w., that will be discussed below. (Answer at pages 3 and 4.)

1.d.~1.m. It is alleged that Applicant has ten past-due debts to Creditor D in an amount totaling about \$1,878. Through the services of her debt counseling service these alleged debts have been deleted and removed, as evidenced by her January 2014 credit report. (Response at pages 6~9.)

1.n., 1.o., 1.t., and 1.x. It is alleged that Applicant has past-due debts to Creditor N in an amount totaling about \$1,653. Through the services of her debt counseling service these alleged debts have been deleted and removed, as evidenced by her January 2014 credit report. (Response at pages 7, 13 and 14.)

1.p. and 1.s. It is alleged that Applicant has past-due debts to Creditor P in an amount totaling about \$516. Through the services of her debt counseling service these alleged debts have been deleted and removed, as evidenced by her January 2014 credit report. (Response at pages 7, 12 and 13.)

1.q. It is alleged that Applicant has a past-due debt to Creditor Q in the amount of \$289. She has engaged the services of a debt counseling service (Answer at pages 1 and 2); and through them, Applicant is making monthly payments of \$66 towards this alleged past-due debt. (Answer at pages 3 and 4.)

1.r. It is alleged that Applicant has past-due debts to Creditor R in an amount of \$172. Through the services of her debt counseling service this alleged debt has been deleted and removed, as evidenced by her January 2014 credit report. (Response at pages 7 and 12.)

1.u. It is alleged that Applicant has past-due debts to Creditor U in an amount of \$54. Through the services of her debt counseling service this alleged debt has been deleted and removed, as evidenced by her January 2014 credit report. (Response at pages 7 and 13.)

1.v. It is alleged that Applicant has past-due debts to Creditor V in an amount also of \$54. Through the services of her debt counseling service this alleged debt has been deleted and removed, as evidenced by her January 2014 credit report. (Response at pages 7 and 13.)

1.w. Finally, it is alleged that Applicant has past-due debts to Creditor W in an amount also of \$31. Through the services of her debt counseling service this alleged debt has been deleted and removed, as evidenced by her January 2014 credit report.

Guideline E - Personal Conduct

2.a. In answer to "Section 26: Financial Record," on her on June 21, 2013, e-QIP, Applicant failed to disclose her \$331 judgment in favor of Creditor B, as noted in subparagraph 1.b., above; and she failed to disclose her "debts turned over to a collection agency," as noted in subparagraphs 1.c.~1.x., above. Applicant avers she "did not pull my credit report prior to filling out the questionnaire," which is why she did not fill out the form properly. This response is not credible. She knew, or reasonably should have known, she had an outstanding judgment and past-due indebtedness when she executed her e-Qip.

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to 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 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.

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.” 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 Paragraph 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 notes several conditions that could raise security concerns. Under Subparagraph 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under Subparagraph 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Applicant had significant past-due indebtedness. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Subparagraph (c) applies where “*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or under control.*” Subparagraph 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*” Applicant, through her debt counseling service, has addressed all of her alleged past-due debts. Financial Considerations are found for Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

The following Disqualifying Condition under Subparagraph 16(a) applies. It provides that the “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*” may be disqualifying. I can find no countervailing Mitigating Condition here, as Applicant should have disclosed her prior judgment and her other past-due 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 the circumstances. Under AG Paragraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from her Personal Conduct.

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:	FOR APPLICANT
Subparagraphs 1.a.~1.x.	For Applicant
Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge