



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



In the matter of:)	
)	
)	ISCR Case No. 13-00975
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

03/06/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 24, 2009. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 23, 2013, detailing security concerns under Guideline F, financial considerations. The action was taken under 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on October 3, 2013. She submitted a notarized, written response to the SOR allegation dated October 24, 2013, and she requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on November 18, 2013. Applicant received the FORM on November 25, 2013. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. DOHA assigned this case to me on January 15, 2014.¹ The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1.

Findings of Fact

In her Answer to the SOR, Applicant denied the single debt factual allegation in ¶ 1.a of the SOR.² She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 54 years old, works as a linguist for a DOD contractor. Applicant began her current position in February 2009 and works overseas. Applicant did not work for four years before she accepted this position.³

Applicant was born in Iraq. She completed an associate's degree in Iraq in 1979. She fled Iraq in 1990 with many of her family members. She lived in Turkey for more than two years. She then moved to Canada as a refugee, where she lived until she married in October 1995. She moved to the United States when she married and

¹The issuance of this decision was delayed to correct a problem created by the issuance of earlier Adjudicative Guidelines to Applicant, not the most recent Adjudicative Guidelines. The correct Adjudicative Guidelines were mailed to Applicant on January 17, 2014. She was given 30 days from the date of the letter to review the Adjudicative Guidelines, and if she chose, to submit additional information. Since Applicant is working overseas, she did not receive the letter until February 2, 2014. The record was held open until March 4, 2014 to give her 30 days to submit any additional information after a review of the correct Adjudicative Guidelines.

²When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

³Items 5 and 6.

became a U.S. citizen in 2001. She has a 15-year-old son, who was born in the United States and resides in the United States. Applicant and her husband are separated.⁴

Around 2004, Applicant's husband became disabled from working due to back injuries. Prior to this, her husband operated a small machine repair shop. He has not worked since 2004, and Applicant worked only one year between 2004 and 2009. During this time, social security provided income to her and her family, who lived with her husband's sister. During this time, Applicant and her husband developed financial problems.⁵

When Applicant completed her e-QIP on February 24, 2009, she acknowledged past-due debts. She listed six credit card debts and advised that she would pay these debts as soon as she was financially able. The December 2010 credit report reflects that all six accounts listed on her e-QIP were paid. The credit report also showed that two other credit card debts were paid. The \$16,000 judgment in SOR ¶ 1.a is listed on this report, but the debt is not listed on the credit report. The judgment is not shown as paid. When she met with the Office of Personnel Management (OPM) investigator on December 28, 2010, Applicant advised the OPM investigator that this debt had been paid, but she has not provided documentation showing that this debt is paid.⁶

By denying the factual allegation that she owed the \$16,000 judgment, Applicant asserted that she had paid the debt. Her receipt of the SOR and FORM should have put her on notice that additional documentation was needed to establish the judgment had been paid or was being paid. No documentation was received.

Applicant has not provided a budget, but she did submit two earnings statements from February 2013 and one from September 2013. She also provided a document from her payroll office, indicating that it had received a garnishment notice for \$3,312 plus interest. The court case triggering this garnishment is not identified. The earnings statements show that her wages are being garnished and that by September 2013, she had paid \$2,814 towards the garnished debt. The two credit reports in the record do not reflect any outstanding debts, except the SOR judgment.⁷

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

⁴Items 5 and 6.

⁵Item 6.

⁶Items 5 and 6.

⁷Item 4; Items 7 and 8.

disqualifying conditions and mitigating conditions, which are used 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 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.

Under 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 applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an 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 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed significant financial problems when her husband became disabled. She was unable to pay her debts for sometime, and one debt remains outstanding. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

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

The SOR identified only one unpaid debt, a \$16,000 judgment. Applicant's financial problems started when her husband became disabled from working and she was not working. Her husband's disability and subsequent loss of income is a factor beyond her control. Once she returned to full-time employment and as she stated, Applicant paid all her past-due credit card debts, which are not listed in the SOR. She acted reasonably towards these debts. She advised the OPM investigator that she had paid the \$16,000 judgment, but she has not provided proof that this debt is resolved. While she showed that her wages are being garnished, she has not shown that the garnishment is for the SOR judgment. AG ¶¶ 20(b), 20(c), and 20(d) are clearly applicable to the non-SOR debts, but given the lack of documentation to show that the judgment is paid, she has not mitigated the security concern raised by the SOR.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began when her husband became disabled from working around 2004. When she returned to full-time employment, she kept her promise and paid all her past-due debts as shown by her credit reports. She told the OPM investigator that she paid the judgment, but the record lacks any documentary evidence that this debt has been paid. The 2013 credit report does not reflect that a release has been filed with the court, stating that the debt is paid. The documents related to the garnishment of her salary do not reflect that the garnishment is for the judgment listed in the SOR, given that the amount of the garnishment is far less than the amount of the judgment. While Applicant clearly took responsibility for the debts listed in her e-QIP, the documentation in the record does not support a finding that she has resolved the \$16,000 judgment listed in the SOR. A security concern remains.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her finances under Guideline F.

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
Subparagraph 1.a:	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.

MARY E. HENRY
Administrative Judge