



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



In the matter of:)
)
) ISCR Case No. 14-00108
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance. Applicant owes approximately \$68,000 in unresolved delinquent debt. Clearance is denied.

Statement of the Case

On March 7, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing. The Government submitted its written case on August 22, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant. In addition, Applicant was also provided a copy of the Directive.² Applicant received the FORM on September 4, 2014. Applicant did not submit a response to the FORM, nor did she object to the attachments, which are admitted as Government's Exhibits (GE) 1 through 8. The case was assigned to me on November 3, 2014. I opened the record to allow the parties to submit additional information. Applicant submitted Applicant's Exhibits (AE) A and B.³ AE B purports to be three money orders showing payments to the creditor alleged in SOR ¶1.a; however, the payment information is illegible. On November 24, 2014, I contacted Applicant, informing her of the state of the exhibit and giving her the opportunity to submit another copy. She did not respond. As a result, AE A and B are admitted, as is, without objection.⁴

Findings of Fact

Applicant, 51, has worked for a federal contractor since August 2012. This is her first application for access to classified information. On her security clearance application, dated August 15, 2013, Applicant disclosed that she has had financial problems within the past seven years. Applicant cites several reasons for her financial problems: a 10-month period of unemployment between October 2011 and August 2012; an unspecified reduction in her husband's work hours; a \$50,000 decrease in income upon accepting her current employment; and an increase in expenses caused by providing financial support to her brother and his family for eight months. The ensuing investigation revealed that Applicant is indebted to 11 creditors for approximately \$68,000, which includes a delinquent home mortgage (\$38,861). All 11 debts were alleged in the SOR.⁵

Applicant admits that she owes two of the delinquent accounts (SOR ¶¶ 1.f and 1.h), but claims that she is making payments on each account. She denies the remaining nine accounts. She claims that she is making payments toward the judgment alleged in SOR ¶ 1.a (\$1,996) and that the judgment alleged in SOR ¶ 1.b (\$6,070) has been satisfied. She also attests that her mortgage, SOR ¶ 1.c, is current. Applicant claims to have no knowledge of the remaining six accounts (SOR ¶¶ 1.d-1.e, 1.g, and 1.i-1.k). Applicant does not provide any documentation to corroborate her claims. Nor has she provided any current documentation about her current finances.⁶

² FORM cover letter, dated April 9, 2014.

³ AE A: Applicant's Letter, undated; and AE B: Copy of Money Orders.

⁴ All correspondence regarding Applicant's post-hearing submissions is appended to the record as Hearing Exhibit I.

⁵ GE 3 – 8; AE A.

⁶ GE 3; AE A – B.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Section 7 of EO 10865 provides that adverse 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

Financial Considerations

Unresolved delinquent debt is a security concern because "an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds."⁷ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.⁸ The Government does not have to prove that an applicant poses a clear and present danger to national security,⁹ or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show

⁷ AG ¶ 18.

⁸ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

⁹ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

that an applicant has a history of unresolved financial difficulties that may make her more vulnerable to financial pressures.¹⁰

The SOR alleges that Applicant owes approximately \$68,000 in delinquent debt. The allegations are supported by the record, establishing the Government's *prima facie* case.¹¹ Applicant has demonstrated an inability to pay her debts as well as a history of not doing so.¹² Applicant did not present sufficient information to mitigate the financial concerns in the SOR. The record does not support a finding that Applicant's financial problems were beyond her control, that she has acted responsibly to resolve her financial issues, or that she made a good-faith effort to repay her creditors. Applicant has not provided any basis for disputing the debts alleged in the SOR, nor does it appear that she has taken any steps to contact the alleged creditors to investigate or inquire about the SOR debts.¹³ Finding no evidence to the contrary, I find that Applicant's financial problems are ongoing and that her finances are not under control. As such, Applicant's unresolved delinquent debts continue to cast doubt on her current reliability, trustworthiness, and good judgment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant failed to meet her burdens of production and persuasion. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial concerns. Applicant did not provide sufficient evidence showing the resolution of her delinquent debt or any evidence to show financial rehabilitation. The security concerns raised in the SOR remain. Following *Egan*¹⁴ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.k:	Against Applicant

¹⁰ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹¹ GE 5-8.

¹² AG ¶¶ 19(a) and (c).

¹³ ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue).

¹⁴ *Navy v. Egan*, 484 U.S. 518 (1988).

Conclusion

Based on the record, 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.

Nichole L. Noel
Administrative Judge