



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02964

Appearances

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

07/31/2015

Decision

HOWE, Philip S., Administrative Judge:

On July 29, 2013, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On August 20, 2014, the Department of Defense issued to 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 Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); 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 December 10, 2014. Applicant admitted all but three of the allegations in the SOR. Applicant requested her case be decided on the written record in lieu of a hearing.

On March 9, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to the Applicant on March 9, 2015. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on May 13, 2015. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on June 12, 2015. I received the case assignment on June 24, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all but three of the 17 allegations in the SOR. Applicant wrote she was unaware of the traffic tickets listed in Subparagraphs 1.p and 1.q, and the ticket listed in Subparagraph 1.r. The other debts she stated would be paid by installment payments starting in October 2014. The allegations pertain to delinquent debts owed by Applicant totaling \$20,874. (Item 2)¹

Applicant is unmarried and has two adult children. She is 48 years old. She works as a protective service officer for a federal contractor and has for three years. She was unemployed from October 2010 to September 2012. (Item 3)

Applicant owes \$20,874 on the 17 alleged debts. These debts are listed in the two credit reports in the file, one from January 2014 (Item 4) and one from September 2013. (Item 5) She has resolved one by payment (Subparagraph 1.c for \$90 dating from 2011) and is paying another one on an installment payment agreement started in October 2014 (Subparagraph 1.g for a telephone bill for \$578 originating in 2011). (Items 2, 4, 5, Answer attachments)

Applicant has 10 delinquent medical debts. Eight were incurred in 2012, one in 2011 and one in 2008. She has not resolved any of them. They total \$6,796. They are the debts alleged in Subparagraphs 1.a (\$602), 1.b (\$687), 1.e. (\$191 from 2008), 1.h. (\$270), 1.i (\$92), 1.j (\$480), 1.k (\$211), 1.m (\$6,013), 1.n (\$40), and 1.o (\$210 in 2011). (Items 2, 4, 5)

¹ There is no Subparagraph 1.l in the SOR.

Applicant owes a \$680 utility debt from 2013 (Subparagraph 1.d), and a \$16,095 car purchase debt from 2012 for a car she co-signed on the note for a person who is presently no longer her friend and who never made a payment on it (Subparagraph 1.f). Applicant is now obligated on the balance owed after the car was sold by the dealership. She also owes money on two traffic tickets Applicant asserts she did not know existed and must have been incurred by her former friend in the amounts of \$250 (Subparagraph 1.p), and \$300 (Subparagraph 1.q). Lastly, Applicant owed \$85 on a parking ticket (Subparagraph 1.r). None of these debts have been resolved. (Items 2, 4, 5)

Applicant was employed in several different positions from January 2003 to October 2010 when she was laid off. She was unemployed from October 2010 to September 2012 when she was hired for her current position. While unemployed she did not have any health insurance. (Items 2, 3; Answer with attachments)

Applicant did not submit any documentation that she has participated in credit counseling or budget education. 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.

Department Counsel submitted six Items in support of the SOR allegations. Item 6 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 September 25, 2013. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. 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.

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 2008 to the present, Applicant accumulated 17 delinquent debts, totaling \$20,874 that remained unpaid or unresolved in a timely manner.

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

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

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on her ability to repay her debts. In the past 12 years, Applicant has been unemployed almost two years. Her lack of income and health insurance caused the 10 medical bills to accumulate. At the same time she co-signed a car loan for her former friend and is obligated on the entire debt which she has not resolved. She incurred other debts she did not repay. She has not acted responsibly under the totality of the circumstances so AG ¶ 20 (b) is established only during the period of unemployment. She was employed before being laid off and has been working for two years, during which she could have resolved more debts to demonstrate her commitment to repaying her debts.

Applicant did repay the \$90 electric bill and the cell telephone debt of \$578 on the installment plan within the past two years. She resolved two of 17 debts, not a good

showing of a consistent effort to repay her debts in a regular manner. Her Answer states in 14 of 17 responses to the SOR allegations that she will set up a payment plan for each debt by October 2014. She did not submit any documents to show she took that action on each of the debts. Therefore, AG ¶ 20 (d) has only limited applicability as it pertains to two 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 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 has taken only limited action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligations. Her lack of action continues to this day and is obviously voluntary. Her inaction will continue based on her past performance. 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 twelve years during her periods of employment.

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. I conclude the whole-person concept against Applicant.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1. d to 1.f:	Against Applicant
Subparagraphs 1. g:	For Applicant
Subparagraphs 1.h to 1.k:	Against Applicant
Subparagraphs 1.m to 1.r:	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

