



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-03025
)	
)	
Applicant for Security Clearance)	

Appearances

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

09/03/2015

Decision

HOGAN, Erin C., Administrative Judge:

On July 25, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the 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; 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 for SORs issued after September 1, 2006.

Applicant timely answered the SOR on August 23, 2014, and requested that her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on March 13, 2015. The FORM was forwarded to Applicant on April 22, 2015. Applicant received the FORM on April 27, 2015. She had 30 days to submit a response to the FORM. Applicant did not submit a response to the FORM. On July 30, 2015, the FORM was forwarded to the hearing office and was assigned to me on July 31, 2015.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admits to all of the SOR allegations. (Item 1)

Applicant is a 33-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. Applicant has been employed with the company since March 2013. She also has a part-time job. She has a high school diploma, and some college. She separated from her husband in September 2009. The divorce is pending. She has a 16-year-old son. (Item 2)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on September 26, 2013. (Item 2) A subsequent background investigation revealed that Applicant had 18 delinquent debts, a total approximate balance of \$22,354. (Item 3; Item 4)

In response to the SOR, Applicant indicates that most of the unpaid debts are involved in divorce litigation proceedings. She references a letter from her attorney that was to be submitted at a later date. A letter from her attorney was not submitted. Applicant is in the process of rehabilitating the student loan accounts alleged in SOR ¶¶ 1.a – 1.e and 1.o. After ten months of payments, the student loan accounts will no longer be in default. The student loan accounts are the subject of litigation in her divorce. She states the debts alleged in SOR ¶¶ 1.i, 1.k – 1.r are either paid in full or she is making payment arrangements. She did not provide documentation to verify this assertion. (Item 2)

Status of the Delinquent Debts:

SOR ¶¶ 1.a – 1.e and 1.o: delinquent student loan accounts in the amount of \$5,343; \$3,225; \$2,866; \$2,576, \$1,801; and \$512. (Item 3 at 3; Item 4 at 2) Applicant did not submit matters in response to the FORM. Department Counsel obtained an updated credit report on March 10, 2015, which indicated that Applicant has brought all of her student loan accounts current. (Item 5 at 2-7) This indicates Applicant successfully rehabilitated her delinquent student loans.

SOR ¶ 1.f: \$1,200 medical account placed for collection in August 2012. (Item 3 at 8; Item 4 at 2) Applicant states that she has a payment arrangement for this account. She did not provide the specifics of the payment arrangement. She also mentions that this is a subject of her divorce litigation. The most recent credit report dated March 10, 2015, lists this debt as delinquent with a \$1,200 balance. (Item 2 at 1; Item 5 at 2) Considering the account balance remains at the original \$1,200 balance, it is unlikely that payments were being made on this account.

SOR ¶ 1.g: \$686 delinquent cell phone account placed for collection in February 2010. (Item 3 at 9; Item 4 at 2) Applicant claims that this is for a cell phone that her ex-husband used even though the account was in her name. She states the account is a subject of her divorce litigation. The March 2015 credit report lists the debt as unpaid and the balance remains at \$686. (Item 2 at 1; Item 5 at 1)

SOR ¶ 1.h: \$430 delinquent water bill placed for collection in May 2009. (Item 3 at 9; Item 4 at 2) Applicant mentions that this account was for water service for her marital residence. The bill was in her name. When she moved out, her husband was to transfer the bill to his name. He did not transfer the account and did not pay the bill. This account is a subject of her divorce litigation. (Item 2 at 1) The March 2015 credit report lists the debt as unpaid and the balance remains at \$430. (Item 5 at 2)

SOR ¶ 1.i: credit card account with a balance of \$371, past due in the amount of \$53. (Item 4 at 2). Applicant indicated this account was current, but provided no documentation verifying this assertion. (Item 2 at 2) The March 2015 credit report lists the account as being past due in the amount of \$430. (Item 5 at 3)

SOR ¶¶ 1.j and 1.l: convenience store debt for insufficient funds checks written in July 2008 in the amounts of \$282 and \$145. (Item 4 at 2; Item 5 at 2) Applicant claims her ex-husband forged the checks in her name. The debts are the subject of her divorce litigation. (Item 2 at 2) The March 2015 credit report lists both accounts as remaining past due. (Item 5 at 2)

SOR ¶ 1.k: \$228 medical account placed for collection in May 2010. (Item 3 at 10; Item 4 at 2) Applicant claims the debt is paid in full. She provided no documentation, such as receipts, verifying the debt is paid. (Item 2 at 2) The March 2015 credit report still lists the debt, but states "Consumer disputes this account information." (Item 5 at 2)

SOR ¶ 1.m: \$99 medical account placed for collection. (Item 4 at 2). Applicant claims this debt is currently paid in full. She did not provide documentation verifying that the debt was paid. (Item 2 at 2) The debt is not listed on the March 2015 credit report. (Item 5)

SOR ¶ 1.n: \$29 student loan account placed for collection in April 2012. (Item 3 at 4; Item 4 at 2). Applicant claims this debt is currently paid in full. She did not provide documentation verifying that the debt was paid. (Item 2 at 2) The March 2015 credit report lists the debt as delinquent. (Item 5 at 3)

SOR ¶ 1.p: \$1,803 delinquent debt placed for collection in May 2011. (Item 3 at 8) Applicant claims that payment arrangements were set up for this account. She also mentioned that this debt is a subject in her divorce litigation. She did not provide documentation of the payment arrangements and proof that payments were being made on the account. The debt is not listed on the March 2015 credit report. (Item 2 at 2; Item 5)

SOR ¶ 1.q: \$436 medical account placed for collection in January 2013. (Item 3 at 9). Applicant claims this debt is currently paid in full. She did not provide documentation verifying that the debt was paid. (Item 2 at 2) The debt is not listed on the March 2015 credit report. (Item 5)

SOR ¶ 1.r: \$322 medical account placed for collection in March 2013. (Item 3 at 9). Applicant claims this debt is currently paid in full. She did not provide documentation verifying that the debt was paid. (Item 2 at 2) The debt is not listed on the March 2015 credit report. (Item 5)

Applicant provided no information about her current financial situation, including her monthly income and her monthly debts. She did not provide information on her duty performance such as performance evaluations, letters from supervisors and co-workers. Although Applicant mentioned in her answer to the SOR that her attorney was going to submit a separate letter, DOHA did not receive a letter from Applicant's attorney.

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 must be considered when 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, 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 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 the applicant may deliberately or inadvertently fail to 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant incurred numerous delinquent debts that she has been unable or unwilling to pay over the past several years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) does not apply. Although Applicant indicates that she either paid or entered into payment plans to resolve several of her debts, she provided no documentation to support her assertions, such as receipts, cancelled checks, or a formal payment agreement from a creditor. She claims several of the debts (SOR ¶¶ 1.f – 1.h, 1.j, 1.l, and 1.p) are involved in her

divorce litigation. Although she mentioned her attorney was going to forward a separate statement, no statement was entered into the record. Applicant's failure to provide sufficient evidence to demonstrate that she is resolving her delinquent accounts still raises doubts about her reliability, trustworthiness, and judgment.

AG ¶ 20(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) partially applies because Applicant separated from her husband in 2009. Applicant's divorce remains pending litigation six years later. Applicant encountered circumstances beyond her control which caused some financial problems. However, I cannot conclude that she acted responsibly under the circumstances because she provided no proof she is in the process of resolving her delinquent debts.

AG ¶ 20(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) does not apply. There is no evidence Applicant received financial counseling. While Applicant has rehabilitated her student loans, several delinquent debts remain unresolved. Applicant's financial situation is not under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.a – 1.e, and 1.o because proof was provided that her student loans were rehabilitated. SOR ¶¶ 1.m, 1.q, and 1.r are also found for Applicant because Applicant states she paid the debts, and the debts were not listed on the most recent credit report in the record, dated March 10, 2015. While Applicant claims that she either resolved or was in payment plans for her remaining debts, she did not provide documentation verifying this assertion such as receipts, copies of formal payment agreements with the company, and cancelled checks. Applicant failed to demonstrate that she is making a good-faith effort to resolve the delinquent accounts alleged in SOR ¶¶ 1.f – 1.1, 1.n, and 1.p.

AG ¶ 20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) applies with respect to the debt alleged in SOR ¶ 1.f because the March 2015 credit report indicates Applicant formally disputes this debt. However, there is no information regarding the outcome of the dispute.

While Applicant claims she has either paid or is resolving her remaining delinquent accounts, she has not provided documentation of the actions that she claims she has taken to resolve her accounts. She maintains that several accounts alleged in the SOR are involved in pending divorce litigation, but nothing in the record corroborates this assertion. Applicant also did not provide details regarding the status of the divorce litigation. Applicant chose to have a decision based on the administrative record, as a result, there was no opportunity to discuss these matters in further detail.

Based on the evidence in the case file, Applicant has not provided sufficient evidence to mitigate the concerns raised under financial considerations.

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. 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 the facts and circumstances surrounding this case. I considered Applicant's separation and pending divorce partially contributed to Applicant's financial problems. However, Applicant has been separated from her husband for over six years. She continued to incur delinquent accounts several years after her separation from her husband.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if they have trouble managing their finances, this can raise doubts about their ability to handle and protect classified information. Applicant's history of financial problems raises doubts about her ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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
Subparagraphs 1.a - 1.e, 1.m, 1.o, 1.q, 1.r:	For Applicant
Subparagraphs 1.f – 1.l, and 1.n:	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.

ERIN C. HOGAN
Administrative Judge