



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-03062
)	
Applicant for Security Clearance)	

Appearances

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

06/30/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by her adverse financial history. She incurred over \$10,000 in delinquent debt and failed to submit sufficient evidence that she satisfied her past-due debts, is paying the debts, or has a reasonable basis to dispute the debts. She also failed to demonstrate that her current finances are under control. Clearance is denied.

Procedural History

On August 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant’s circumstances raised security concerns under the financial considerations guideline.¹ On September 22, 2014, Applicant answered the SOR, waived her right to a hearing, and requested a decision on the written record (Answer).

¹ This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

On March 27, 2015, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains six documentary exhibits that were admitted into evidence, without objection, as Government Exhibits (Gx.) 1 – 6. Applicant did not submit a response to the FORM within the allotted 30-day period. The cover letter accompanying the FORM and Applicant's acknowledgment of receiving the FORM were marked as Hearing Exhibit (Hx.) I.

On June 17, 2015, I was assigned Applicant's case. On my own motion, I opened the record to secure a copy of the SOR and provide Applicant a final opportunity to submit a response to the FORM. See Hx. II (e-mail to parties); Hx. III (copy of SOR). Applicant elected not to submit a Response, and the record closed on June 25, 2015.

Findings of Fact

Applicant, a truck driver, has been working for her current employer since 2013. She is a high school graduate and attended college, but did not receive a degree. She is currently single, but lives with her former husband. She has four adult children.

Applicant was apparently the victim of predatory lending practices engaged by her former lender that contributed to her and her former husband's decision to assume a mortgage they could not afford. They eventually defaulted on the mortgage and the property was foreclosed. She submitted documentation of receiving a payment of less than \$1,000 from a class action lawsuit against her former lender.² SOR 1.a references Applicant's default on the mortgage on her former home. She disclosed the delinquent mortgage on her security clearance application (SCA), explaining that she and her former husband could not afford to fix the home after it sustained some water damage, and "gave the house back to the bank, [which] sold it and no other action was taken."³

The remaining 15 SOR allegations refer to past-due debts as reflected on Applicant's June 2013 and 2014 credit reports. The SOR debts include an \$11,000 credit card debt that Applicant listed on her SCA, explaining the debt was for a car her son had borrowed and she was repaying.⁴ She now states that her "son owes this [debt] as [he] was taken to small claims court for and awarded \$6,000. In litigation due to no money from judgment."⁵ Applicant did not submit documentation to support her claim disputing she owes the \$11,000 debt. The debt is listed at SOR ¶ 1.l.

Applicant claims that she paid her delinquent student loan accounts (SOR ¶¶ 1.b, 1.k, 1.m-1.o), and was paying several other SOR debts (SOR ¶¶ 1.g-j, and 1.m-o). She submitted a portion of a credit report from September 2014 with handwritten notations as proof of satisfying her student loan debts. A more recent credit report included with

² Gx. 1 (Answer).

³ Gx. 2 at 37.

⁴ Gx. 2 at 36.

⁵ Gx. 1 (Answer).

the FORM indicates that two of Applicant's student loan accounts were paid after the Government sent them to collection. It also reflects that two other student loan accounts, totaling over \$4,500, are either in collection status or seriously past due.⁶ The recent credit report reflects that a number of the accounts Applicant claims she was repaying remain unpaid, and are listed as in collection status or charged off.⁷

Applicant denies the SOR debts at ¶¶ 1.c-1.f, and 1.p, having filed disputes regarding these debts with the credit reporting agencies in September 2014. She did not submit an update regarding her disputes. At least three of these debts remain on her current credit report and are listed as unpaid collection or charged-off accounts.⁸

Applicant was questioned about her adverse financial record, to include a substantial number of the SOR debts, during her security clearance background interview in June 2013. At the time, Applicant told the investigator that she had "recently sought financial counseling," and was in the process of resolving her past-due debts through a debt consolidation program (DCP).⁹ Applicant did not submit evidence regarding her current finances or to support her claim of receiving financial counseling. As of the close of the record, the \$11,000 delinquent credit card debt and several other SOR debts remain unresolved.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

⁶ Gx. 3 [*trade lines*, entries 10 and 11 (paid collection accounts), entries 14 and 16 (collection and charged-off accounts)].

⁷ Gx. 3 [*collections*, entries 2-4 (SOR 1.h-1.j); *trade lines*, entry 4 (SOR 1.g)].

⁸ Gx. 3 [*collections*, entries 1, (SOR 1.d); 5 (SOR 1.e); *trade lines*, entry 8 (SOR 1.c)].

⁹ Gx. 6.

admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.¹⁰

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern regarding individuals who fail to pay their financial obligations and incur delinquent debt is explained at 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. . . .

Thus, the financial considerations security “concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money

¹⁰ Security clearance adjudications are “not an exact science, but rather predicative judgments about a person’s security suitability,” where an applicant’s past history is the best indicator of future conduct. ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) [citing to *Egan*, 484 U.S. at 528-529 (1988)].

in satisfaction of his or her debts.”¹¹ The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant amassed over \$10,000 of delinquent debt that remains unresolved. This record evidence raises the financial considerations security concern. It also establishes AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

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;

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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant mitigated security concerns arising from the foreclosure of her former home. AG 20(a) applies to SOR ¶ 1.a. However, none of the mitigating conditions fully apply to mitigate the security concerns arising from the remaining SOR debts. Individuals seeking a security clearance are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of substantial delinquent debt.¹² By electing to represent herself and relying solely upon the written record, Applicant bore the burden of presenting clear, concise, and unambiguous documentary evidence in support of her position. Her submission of a portion of a somewhat dated credit report with handwritten notations is far from clear. More importantly, this evidence is contradicted by a more recent credit

¹¹ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

¹² ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008).

report that was included with the FORM. Applicant elected not to respond to the FORM.¹³ The majority of the SOR debts remain unrefuted and the security concerns emanating from her substantial delinquencies remain unmitigated.

Furthermore, two years ago during her security clearance background interview, Applicant claimed to have received financial counseling and that she was in the process of resolving her delinquent debts. She did not submit documentary evidence to support her claims. Applicant's failure to submit such evidence, and the substantial amount of delinquent debt that remains, leads me to conclude that her finances continue to present a security concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁴ I gave due consideration to all the favorable and extenuating factors in this case, including the predatory lending practices that contributed to Applicant and her former spouse assuming a mortgage they eventually could not afford. However, the favorable record evidence does not outweigh the security concerns raised by Applicant's adverse financial record. An individual is not required to be debt free, or required to resolve all past-due debts simultaneously, or even resolve the delinquent debts listed in the SOR first. However, individuals seeking a security clearance must establish that they manage their finances in a manner expected of those granted access to this nation's secrets. Applicant failed to meet her burden of persuasion. Consequently, the record evidence leaves me with doubts and questions about Applicant's present eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.p:	Against Applicant

¹³ See Hx. I; FORM; Hx. III (Applicant was repeatedly advised of the importance of submitting documentary evidence in support of her position).

¹⁴ The non-exhaustive list of factors are: (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.

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge