



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



In the matter of: REDACTED Applicant for Security Clearance))))))	ISCR Case No. 14-00321
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Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

03/25/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by her history of not meeting financial obligations. Although her financial problems relate, in part, to periods of unemployment and underemployment, she has been employed full time since 2011 and failed to establish that her financial situation is under control. Clearance is denied.

Statement of the Case

On April 22, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant’s conduct and circumstances raised security concerns under the financial considerations guideline (Guideline F).¹ On May 5, 2014, Applicant answered the SOR, affirmatively waived her right to a hearing, and requested a decision regarding her suitability for a clearance on the written record.

¹ This action was taken under Executive Order (E.O.) 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 implemented by DOD on September 1, 2006.

On September 30, 2014, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government's proposed findings of fact, argument, and eight exhibits. Applicant did not submit a response to the FORM within the allotted 30-day period.

On March 10, 2015, I was assigned Applicant's case and *sua sponte* opened the record to provide her a final opportunity to submit a response to the FORM and provide any additional matters in support of her case.² On March 17, 2015, Applicant submitted a Response and offered Applicant's Exhibit (Ax.) A. Government Exhibits (Gx.) 1 – 8 and Ax. A are admitted into evidence without objection.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact:³

Applicant is in her forties and is married. She has three children, who range in ages from 14 to 25. She earned an associate's degree in 2005, and her bachelor's degree in 2013. She was unemployed for a year from October 2010 to October 2011. In October 2011, she secured a job as a federal contractor and was granted a clearance at the confidential level. She has been with her current employer since August 2013. She is employed as a financial analyst.

In August 2013, Applicant submitted a security clearance application (SCA). She disclosed several of her delinquent debts, to include two judgments and a substantial debt for a repossessed car. The SOR lists seven delinquent debts, including the two judgments and the car debt. Applicant admits all the SOR debts, except a \$480 collection account (1.c). The \$480 collection account is reflected on a credit report Applicant submitted with her Answer.

Applicant states that she satisfied the two judgments listed on her SOR (1.a and 1.b). The judgments are for payday loans that she took out to help pay other debts. She did not pay back the loans and the creditors secured judgments. Applicant has insisted throughout the security clearance process that both judgments were satisfied through wage garnishment. She did not submit documentation to corroborate her claim, but Department Counsel notes that Gx. 7, a credit report, supports Applicant's position that the 2009 judgment (1.a) was paid.⁴ Applicant also claims she paid a \$100 delinquent medical debt (1.f), but did not submit documentation to support her claim.

² See Hearing Exhibit (Hx.) I, which has been included and made a part of the record.

³ In reaching the above findings of fact, I have made only those reasonable inferences supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

⁴ FORM at 3.

Applicant's largest SOR debt is for a charged-off account of over \$11,500 (1.g). The debt is for her car that was repossessed in about 2007 (car debt). Applicant anticipates the car debt will be removed from her credit report in the near future. She submitted no evidence regarding efforts to resolve the car debt. She also did not submit evidence of efforts to resolve a \$620 collection account (1.e), or information regarding the debt's current status. She states that a separate collection account for \$370 (1.d) was removed from her credit report, but did not provide information whether such action by the credit agency was due to payment of the debt or other reason. SOR debts 1.c, 1.d, 1.e, and 1.g, which together total over \$13,000, remain unresolved.

Applicant states her financial problems were a result of a period of unsteady employment before securing a contractor position in October 2011. She has conducted research on repairing her credit. At one point, Applicant's delinquent debts included her student loans. She defaulted on her student loans, but rehabilitated the loans and they are now current. (Response) She submitted a credit report with her Answer, which notes that her student loan accounts are current. The credit report also reflects that she has been late paying her car loan in the recent past. Other than the credit report, Applicant did not submit information regarding her current income, expenses, or other evidence regarding her current finances.

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 only 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, 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 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 531.⁵ However, there is no *per se* rule requiring disqualification, as a judge must decide each case based on its own merits.⁶

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.

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 an individual with financial problems 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

One aspect of the concern is that an individual who is financially overextended may be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant’s accumulation of over \$13,000 in unresolved delinquent debt raises this concern. The evidence also establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

⁵ 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.”).

⁶ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

AG ¶ 19(c): a history of not meeting financial obligations.

An individual's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."⁷ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions in this case are:

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 incurred a substantial amount of delinquent debt because of unemployment and underemployment. She resolved her student loans after being hired as a federal contractor, but despite full-time employment since 2011 has yet to address a number of past-due debts. These unresolved debts include a considerable car debt that she incurred in 2007. Her delinquent debts are substantial and ongoing.⁸ Applicant's failure to address her longstanding debts undercuts the favorable evidence of responsible conduct in resolving other debt. AG ¶ 20(a) does not apply, and AG ¶ 20(b) partially applies.

⁷ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See *also* ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

⁸ ISCR Case No. 12-11660 at 2 (App. Bd. Jul. 9, 2014) ("In light of the absence of corroboration of Applicant's statements that he had paid his debts, the Judge could reasonably conclude that Applicant's financial problems were still ongoing."); ISCR Case No. 11-13507 at 2 (App. Bd. Oct. 29, 2013) ("unpaid delinquent debts constitute a continuing course of conduct, thereby undermining a conclusion that the debts are not recent within the meaning of the Directive.").

Applicant is waiting for the remaining SOR debts to fall off her credit report. She only satisfied the two payday loan judgments after the creditors garnished her pay. Disregarding a lawful debt or satisfying a debt under such circumstances does not amount to a good-faith effort to repay overdue creditors. Applicant has accomplished some self-study to improve her credit and her employment as a financial analyst indicates that she likely has some understanding of the principles of financial management. However, other than a credit report from May 2014, she did not submit evidence from which a favorable finding regarding her current finances could be made. Individuals are expected to submit documentation or other substantial evidence regarding their efforts to resolve SOR debts or to substantiate their dispute of a debt, as well as evidence of financial reform and rehabilitation.⁹ Applicant failed to meet her burden of persuasion and production. AG ¶¶ 20(c), 20(d), and 20(e) do not apply.

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).¹⁰ I hereby incorporate my above comments and highlight some additional whole-person factors. Applicant voluntarily disclosed some of her delinquent debts on her SCA, which speaks favorably as to her credibility. She resolved other debt after regaining full-time employment, which tends to indicate that she is starting to put her financial house in order. However, her history of not meeting financial obligations and lack of evidence regarding her current finances, raise doubts about her present financial situation. Such doubts must be resolved in favor of national security.¹¹ Overall, the record evidence leaves me with questions and doubts about her current 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
Subparagraphs 1.a, 1.b, 1.f:	For Applicant
Subparagraphs 1.c, 1.d, 1.e, 1.g:	Against Applicant

⁹ ISCR Case 07-10310 (App. Bd. July 30, 2008).

¹⁰ The non-exhaustive list of adjudicative 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.

¹¹ ISCR Case No. 11-00391 at 3 (App. Bd. Dec. 1, 2011) ("The Directive requires a Judge to resolve any doubt in favor of national security.") (citing, Directive, Enclosure 2, ¶ 2(b)).

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