



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-00429
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns arising from her financial situation. She accumulated a substantial amount of delinquent debt over the past five years. She settled and paid some of her past-due debts, but about \$23,000 in delinquent debt remains. The timing of when Applicant paid her debts creates doubt that she will continue to repay her debts and manage her finances in a responsible manner. She failed to mitigate the concern that her history of fiscal irresponsibility indicates she may similarly be irresponsible in handling her security obligations. Clearance is denied.

Statement of the Case

On March 18, 2014, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On April 7, 2014, Applicant answered the SOR, waived her right to a hearing, and requested a decision on the written record (Answer).

On May 12, 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 six documentary exhibits. Applicant submitted an undated response to the FORM (Response). She did not file an objection to the admission of Government Exhibits (Gx.) 1 – 6 and, without objection, they are admitted into evidence. On July 15, 2014, I was assigned Applicant's case.

Findings of Fact

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

Applicant is in her early thirties and is married. She graduated high school in 1999 and attended college for a short time, but did not receive a degree. She enlisted in the U.S. military in 2002, and was granted a security clearance in 2003. Her military service included a four-month deployment in 2006.

Applicant's military service was marred by criminal conduct resulting in the imposition of non-judicial punishment (NJP) on two separate occasions. In 2008, Applicant received NJP for driving under the influence of alcohol. In 2009, she received NJP from her commander, a brigadier general, for committing a battery, which resulted in a reduction in rank. She was barred from re-enlisting in the military due to her misconduct. In 2010, she received an under honorable (general) conditions discharge. She has been gainfully employed as a federal contractor since leaving the military. She has worked for her current employer since 2012.

Applicant's financial trouble started when her rank and pay were reduced following the imposition of NJP for battery in 2009. She was unable to pay her debts and defaulted on several financial obligations. Of note, she did not pay her car loan and her car was repossessed. The debt for the repossessed car currently stands at about \$18,000. Applicant states that she tried to resolve the car debt, but is unable to afford the proposed settlement amount. The debt remains unpaid. In 2011, Applicant took a vacation to the Bahamas while this substantial debt and others listed in the SOR remain unresolved. (Gx. 5 at 30)

The SOR lists 10 delinquent debts totaling over \$25,000. Applicant paid two of the debts around the time she submitted her security clearance application (SCA) in July 2013. She paid four other SOR debts shortly before submitting her Answer in April 2014. She submitted no documentation regarding her efforts to resolve her debts between the time she submitted her SCA and Answer. She submitted no documentation with her Response that she disputed, settled, paid, or otherwise resolved any of the remaining SOR debts. Her delinquent debts currently total about \$23,000.

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. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

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 common sense 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 531.¹ However, as the Appeal Board has unequivocally held, there is no *per se* rule in security clearance cases requiring disqualification. A judge must decide each case based on its own merits.²

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.³

¹ 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.”).

² ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

³ See, ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments about an individual’s ability and willingness to protect and safeguard classified information). See also, ISCR Case No. 11-12202 at 5 (The “Adjudicative Guidelines are designed to *predict*. The prediction in nonsecurity violation cases is made by identifying

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 potential security concern regarding an applicant 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.

The debts alleged in the SOR are established through Applicant’s admissions, SCA, and credit report. Applicant’s accumulation of a substantial amount of delinquent debt raises the Guideline F concern and establishes the disqualifying conditions at:

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

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

The guideline also lists a number of conditions that could mitigate the concern. The potential mitigating conditions 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;

and then evaluating behaviors or circumstances that have an articulable nexus to the ability or willingness to safeguard classified information.”) (emphasis in original).

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.

None of the mitigating conditions apply. Applicant's financial situation is not a result of matters beyond her control, and she has failed to address her past-due debts in a responsible and timely fashion. Originally, Applicant's financial situation was a direct result of her criminal conduct that resulted in a reduction in rank and commensurate reduction in pay. Applicant has continued to disregard her debts over the past four years while gainfully employed as a federal contractor and apparently possessing sufficient funds to afford leisure travel.⁴

Applicant's only documented action of addressing her long-standing debts took place at critical junctures of her current security clearance review. She took no documented action to address her long-standing debts until about the time she submitted her SCA. In the nine months between the submission of the SCA and Answer, she again took no documented action to address her debts. She submitted no documentary evidence with her response to the FORM that she has attempted to address her remaining SOR debts.⁵ Based on this evidence, it appears that Applicant paid some of the minor debts listed in the SOR *solely* for the purpose of gaining a security clearance, not as a true good-faith effort to repay overdue creditors. Also, based on this history, I am not convinced that Applicant will continue to repay her debts and manage her personal finances in a responsible manner once the spotlight of the current security clearance review has passed.⁶

Applicant's delinquent debts are substantial and on-going. She submitted no evidence of receiving financial or debt counseling, nor documentary basis for disputing any of the remaining SOR debts. She also did not submit any documentation that she has disputed, settled, paid, or otherwise resolved the remaining SOR debts. She submitted no evidence that she currently manages her finances in a responsible fashion. Based on Applicant's history of disregarding her financial obligations and lack

⁴ ISCR Case No. 07-13766 at 4 (App. Bd. Nov. 12, 2008) (evidence that an applicant spent funds for a vacation while disregarding their overdue creditors raises "serious questions" about his or her judgment).

⁵ 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).

⁶ ISCR Case No. 11-13949 (App. Bd. Sep. 5, 2013) (adverse decision sustained because applicant was dilatory in addressing his debts and did so only after realizing his clearance was in jeopardy).

of documentation establishing fiscal reform, her financial situation remains a security concern.⁷

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).⁸ I gave due consideration to Applicant's military service and that she previously held a security clearance. I also took into account her honesty in revealing her past-due debts and other potential derogatory information on her SCA. However, this and other favorable record evidence does not mitigate the security concerns raised by her financial situation. Overall, the record evidence leaves me with doubts about Applicant's 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.j	Against Applicant

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

⁷ *Contrast with* ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (applicant submitted substantial documentary evidence of attempting to resolve debt prior to issuance of SOR and fiscal reform).

⁸ 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.