



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-00467
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, 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. Her delinquent debts total over \$75,000. She did not submit evidence showing that she has addressed her debts or to substantiate her dispute of the debts. She failed to establish that her financial situation is under control. Clearance is denied.

Statement of the Case

On April 17, 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 19, 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 November 20, 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 seven exhibits. Applicant did not submit a response to the FORM within the allotted 30-day period.

On February 5, 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 20, 2015, Applicant timely submitted a Response and offered Applicant's Exhibit (Ax.) A. Government Exhibits (Gx.) 1 – 7 and Ax. A are admitted into evidence without objection.³

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact:⁴

Applicant is in her forties and married, with three children ranging in ages from 4 to 20. She recently gave birth to a child that died. She earned a bachelor's degree in 2004 and a master's degree in 2006. She is employed as an engineer, and has been with her current employer since January 2013. Over the past seven years, she has been consistently employed, except for eight months in 2008 when she took time off from work for the birth of her youngest living child.

In October 2013, Applicant submitted a security clearance application (SCA). She reported several delinquent debts. Most of the listed debts were for student loans, but Applicant also listed a considerable debt for a car that was repossessed in 2008. Applicant indicated that she had either entered repayment plans to satisfy her delinquent debts or was in the process of contacting her overdue creditors to negotiate a debt repayment plan. (Gx. 5 at 35-39)

A credit report from November 2013 reflects that Applicant had numerous derogatory accounts, to include four delinquent student loans that were being paid by garnishment. In December 2013, Applicant was interviewed as part of her security clearance background investigation. She was asked about the derogatory accounts reflected on her credit report. Applicant indicated that her financial problems were due to past immaturity in handling her finances and an overwhelming amount of student loan debt. She further indicated that she had consolidated her student loans and was

² See Hearing Exhibit (Hx.) I. Initially, I set a deadline of February 20, 2015, but granted Applicant's request for additional time to submit matters.

³ Gx. 5 is a summary of Applicant's security clearance background interview from December 12, 2013. Department Counsel concedes that the information contained in the summary "may not be entirely correct, or up to date." (FORM, n. 1) Accordingly, I have given this document less weight.

⁴ 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.

repaying them. She told the investigator that she had no credit cards and was paying her current expenses on a consistent basis.

The SOR lists 17 delinquent debts totaling approximately \$80,000. All 17 debts are reflected on the 2013 credit report. (Gx. 6) These debts, except for four minor debts (1.f, 1.g, 1.o, and 1.q), totaling about \$2,500, are also listed on a recent credit report. The recent credit report also reflects that four of Applicant's student loans are still being paid by wage garnishment and the creditor for several other student loan accounts has filed claims with the Government.⁵ (Gx. 7)

Applicant has filed disputes challenging a number of the derogatory accounts listed on her credit report. (Gx. 7) She is working with a credit repair agency to correct what she claims is inaccurate derogatory information that is being reported by the credit bureaus. She did not submit documentary evidence to substantiate the basis of her dispute or efforts to resolve the SOR debts.⁶ She also did not submit information regarding her current income, expenses, or other evidence regarding her current finances, except that her credit score has improved in the past fifteen months from the low 500s to the mid/high 500s. (Ax. A)

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.

⁵ Applicant's student loan accounts are not listed on the SOR and, thus, are only being considered in assessing her mitigation case and whole-person factors.

⁶ The recent credit reflects that Applicant is paying the two mortgages on her home and one of her student loan accounts. (Gx. 7) It is unclear whether this student loan account in good standing reflects all of Applicant's outstanding student loans. Applicant was informed that she bore the burden of providing documentation to substantiate a claim of debt repayment or dispute of a debt. (FORM Response at 3) She elected not to submit such documentation as to her student loans and the debts listed on the SOR.

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 . . . there is a strong presumption against the grant or maintenance of a security clearance."). However, there is no *per se* rule requiring disqualification, as a judge must decide each case based on its own merits.⁷

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 a substantial amount of delinquent debt raises this concern. The evidence also establishes the disqualifying conditions at AG ¶¶ 19(a) ("inability or unwillingness to satisfy debts") and 19(c) ("a history of not meeting financial obligations").

⁷ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

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."⁸ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under the guideline. 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.

None of the mitigating conditions apply. Even after crediting Applicant with resolving the four minor debts that no longer appear on her credit report, she failed to submit evidence to substantiate the basis of her dispute or to document her efforts to address her delinquent debts. She also did not submit evidence of financial counseling or how she currently manages her finances. 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. Notwithstanding full-time employment since 2009, the record evidence reflects that Applicant's unresolved delinquent debts total over \$75,000. Her debts are numerous, substantial, and continue to raise a concern about her suitability for a clearance.¹⁰

⁸ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

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

¹⁰ 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.").

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). I have considered those factors, as well as all available information, in determining Applicant's eligibility.

In October 2013, Applicant filled out an SCA that asked her several questions about her financial record, to include whether she had delinquent debt. In December 2013, she sat down for a security clearance background interview and was questioned about the numerous derogatory accounts reflected on her credit report. These inquiries should have placed Applicant on clear notice regarding the Government's concerns regarding her finances. Applicant stated in the SCA and during her background interview that she was taking steps to resolve her delinquent debts. Seventeen months after submitting the SCA, Applicant still has not provided documentation to corroborate her claim of debt repayment or to substantiate her dispute of the debts at issue. Although the recent loss of her newborn child is a tragic incident that may have impacted or exacerbated her financial situation, her financial problems predate this recent tragedy. Applicant's history of failing to meet her financial obligations, coupled with the lack of evidence regarding her efforts to address her debts and status of her current finances, raise doubts about her present financial situation. Such doubts must be resolved in favor of national security.¹¹

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.e, 1.h – 1.n, and 1.p:	Against Applicant
Subparagraphs 1.f, 1.g, 1.o, and 1.q:	For 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

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)).