



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-00480
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

05/15/2015

Decision

HOGAN, Erin C., Administrative Judge:

On May 20, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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.

On July 31, 2014, Applicant answered the SOR and requested that her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on March 12, 2015. On that same date, the FORM was forwarded to Applicant. Applicant received the FORM on March 20, 2015. She had 30 days to submit a response to the FORM. She timely submitted a Response to FORM which is admitted as Item 4. Department Counsel did not object to Applicant's Response to FORM. Department Counsel's Response to Applicant's Response to FORM is admitted as Item 5. On April 23, 2015, the FORM was forwarded to the hearing office and was assigned to me on April 24, 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 SOR allegations 1.a, 1.b, 1.d, 1.h and 2.a – 2.b. She denies SOR allegations 1.c, 1.e, 1.f, and 1.g. (Item 1)

Applicant is a 57-year-old female employed by a Department of Defense contractor, seeking to obtain a security clearance. Applicant has been employed with the company since April 2014. Prior to her current employment, she worked for a different defense contractor from 1997 to 2014. She is married and has two adult children, a daughter and a son. She has a high school diploma. (Item 2)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on August 14, 2013. (Item 2) When completing her e-QIP, Applicant answered, “No” in response to section 26, Financial Record, “Other than previously listed, have any of the following happened to you? ...Delinquency Involving Enforcement: “In the past 7 years, have you had a judgment entered against you?” (Item 2, Section 26).

Applicant also answered, “No” in response to section 26, Financial Record, “Other than previously listed, have any of the following happened to you?...Delinquency Involving Routine Accounts: In the past seven (7) years, you had bills, turned over to a collection agency? ...you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? ...you have been over 120 days delinquent on any debt not previously entered?... and you are currently over 120 days delinquent on any debt?.” (Item 2, section 26)

Applicant’s background investigation revealed eight delinquent accounts, a total approximate balance of \$53,669.00. (Item 3) It is alleged Applicant deliberately failed to list the judgment alleged in SOR ¶ 1.a in response to the question pertaining to judgments in section 26 of the e-QIP (SOR ¶ 2.a) and that she deliberately failed to list her delinquent accounts alleged in SOR ¶¶ 1.a – 1.h in response to section 26, Delinquency Involving Routine Accounts on her e-QIP, dated August 14, 2013. (SOR ¶ 2.b)

The delinquent accounts include an \$8,200 judgment entered against Applicant in May 2010 (SOR ¶ 1.a: Item 1 at 3, 5, 6; Item 3 at 1); a \$14,737 account placed for collection (SOR ¶ 1.b: Item 1 at 3, 7, 8); an \$8,270 account placed for collection (SOR ¶ 1.c: Item 1 at 3, 5); a \$2,280 delinquent credit card account placed for collection (SOR ¶ 1.d: Item 1 at 3, 10); a \$7,211 charged-off account (SOR ¶ 1.e: Item 1 at 3); a \$7,379 delinquent account placed for collection (SOR ¶ 1.f: Item 1 at 3; Item 3 at 2); a \$4,054 delinquent account placed for collection (SOR ¶ 1.g: Item 1 at 3; Item 3 at 2-3); and a \$1,518 delinquent account placed for collection (SOR ¶ 1.h: Item 3 at 2, 3, and 11).

In response to the SOR, Applicant states that when she completed her e-QIP in August 2013, she answered the questions truthfully to the best of her knowledge. She claims her husband did not tell her about some of the delinquent accounts. Her financial problems arose from her husband losing his full-time job in 2008. Finding other employment was difficult. He has been working part-time jobs for years. In order to deal with the loss of income, Applicant took out a loan against her 401(k) to pay her bills. She has since paid the loan back. In 2010, she and her husband modified their home mortgage to reduce the monthly payment. She believed their financial issues were finally under control. (Item 1)

In 2012, Applicant's son and his infant daughter moved into the household. Applicant's granddaughter has medical issues. Applicant and her husband help out with baby food, diapers, and clothes for the baby. She and her husband share childcare responsibilities with her son by working different hours. Each person takes a turn during the day to care for the baby while the other two people work. (Item 1)

Over the past few years, Applicant was employed in a position that allowed no room for promotion. Her company's health insurance also increased yearly. On April 1, 2014, she started a new job with better wages and with savings on health insurance. (Item 1)

Applicant intends to contact each creditor to set up payment plans or attempt to consolidate. She claims some of the debts are duplicates. The status of the delinquent debts are as follows:

SOR ¶ 1.a: \$8,220 judgment filed against Applicant in May 2010. Applicant states that she has been making payments since May 2010. She provided a copy of the payment agreement, but she did not provide proof documenting that she was making the monthly payments such as receipts, bank records, etc. (Item 1 at 3, 5-6; Item 4)

SOR ¶ 1.b: \$14,737 account placed for collection. Applicant disputed the amount owed. Applicant is trying to come to an agreement with the collection agency. However, she had not heard from them at the close of the record. (Item 1 at 3, 7-8; Item 4)

SOR ¶ 1.c: \$8,270 account placed for collection. Applicant claims this is a duplicate of the debt alleged in SOR ¶ 1.a. It appears the same account number that is alleged in the SOR ¶ 1.c is listed on the correspondence from the law office representing the company who entered the judgment against Applicant alleged in SOR ¶ 1.a. SOR ¶¶ 1.a and 1.c are duplicates. I find for Applicant with respect to SOR ¶ 1.c.

SOR ¶ 1.d: \$2,280 account placed for collection. Applicant states that they have entered into a payment agreement with the company on July 31, 2014. She provided a copy of the payment agreement. She agreed to pay \$50 on the 30th of each month beginning on July 30, 2014. In her response to the FORM, Applicant certifies that she is making payments in accordance with the agreement. However, she did not provide

proof that she was making these payments, such as receipts, bank records, or verification from the attorney's office of her payment history. (Item 1 at 3, 10; Item 4)

SOR ¶ 1.e: \$7,211 charged off account. Applicant claims this is the same account as the debt alleged in SOR ¶ 1.b. I am unable to conclude from the record that this is a duplicate of the debt alleged in SOR ¶ 1.b. (Item 1 at 4)

SOR ¶ 1.f: \$7,379 account placed for collection. Applicant claims this is the same debt as alleged in SOR ¶ 1.a. I am unable to conclude from the record that this is a duplicate of the debt alleged in SOR ¶ 1.a. (Item 3 at 4)

SOR ¶ 1.g: \$4,054 account placed for collection. Applicant claims this is the same debt as alleged in SOR ¶ 1.d. I am unable to conclude from the record that this is a duplicate of the debt alleged in SOR ¶ 1.d. (Item 1 at 4)

SOR ¶ 1.h: \$1,518 account placed for collection. Applicant entered into a payment plan on July 31, 2014. She agreed to pay \$25 each month. In her response to the FORM, Applicant certifies that she has been making the payments. However, she did not provide additional evidence to verify this assertion such as receipts, bank statements, or a payment history from the creditor. (Item 1 at 4, 11, Item 4)

In her answer to the SOR, Applicant admits that she did not list her financial issues in response to section 26 of the e-QIP. She also states that her husband withheld financial information from her. Her husband pays the household bills and she thought some of the debts had been paid. (Item 1 at 2-3) She misunderstood the questions pertaining to judgments. She and her husband entered into a payment agreement with the creditor. They never attended court. She did not believe the remaining debts were far behind. (Item 1 at 2-3)

Applicant has been a contractor for over 29 years. She has been a good employee. She is saddened that she is now looked at as a risk. She promises to make payments in monthly installments until the debts are paid. She is not a position to pay the creditors in full. (Item 4)

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 maintains that she is on payment plans to resolve the debts alleged in SOR ¶¶ 1.a, 1.d, and 1.h, she did not provide any documentation that she is regularly making payments towards these payment plans. The debts alleged in SOR ¶¶ 1.a, 1.b, 1.d – 1.h are unresolved. Applicant's unresolved debt indicates irresponsible behavior and continues to cast doubt on her reliability, trustworthiness, and 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) partially applies because Applicant's husband lost his job in 2008 and has only found part-time work since that time. Applicant also took in her son and granddaughter who has medical issues. 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 verifying her statement that she is making payments on three of her debts. The record evidence is insufficient to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

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 it appears Applicant has taken steps to resolve three of her delinquent debts by entering into payment plans with three of her creditors, she did not provide proof that she is making payments towards these payments on a regular basis. Several of the debts remain unresolved at the close of the record. I am also unable to conclude that Applicant's financial problems are under control because she provided no information about her monthly budget, including her monthly income and expenses. AG ¶ 20(c) does not apply.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant maintains she entered into payment plans with three of her creditors SOR ¶¶ 1.a, 1.d and 1.h, she did not provide

sufficient proof that she is regularly making payments towards those debts. The debts alleged in SOR ¶¶ 1.b, 1.e, 1.f, and 1.g are unresolved. Applicant failed to provide sufficient proof that she is making a good-faith effort to resolve the delinquent accounts.

Financial considerations concerns are not mitigated.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Personal conduct concerns are raised because Applicant did not list all of her delinquent debts, including a judgment and accounts that were charged off or transferred to a collection agency, in response to section 26 of her e-QIP application. This raises the following Personal Conduct Disqualifying Condition:

AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities)

For AG ¶ 16(a) to apply the omission must be intentional. I find Applicant's omissions were not intentional. While she admits she answered section 26 incorrectly, she did not intend to deceive the government about her financial situation. She did not think that she had to list the judgment in response to section 26 because she was making payments towards the judgment. She may not have understood that the creditor obtained a judgment against her based on her explanation that she never went to court. With regard to her charged off accounts, her husband paid the bills. She was unaware that several of these accounts were delinquent. She had no intent to falsify her e-QIP application. Guideline E is found for Applicant.

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 there were circumstances beyond her control which contributed to Applicant's financial problems, including her husband's inability to find full-time employment and granddaughter's medical issues.

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 individuals 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.b, 1.d – 1.h:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge