



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



In the matter of:)	
)	
)	ISCR Case No. 14-00615
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

12/31/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On April 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant, listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. The case was assigned to me on December 1, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated August 24, 2015¹. Applicant received the FORM on August 26, 2015. but she did not submit a response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted ten items for the record.

Findings of Fact

In her answer to the SOR, Applicant denied the SOR allegations, with the exception of 1.f, 1.p, 1.r, 1.s, 1.x, and 1.aa-1.bb under Guideline F. She also provided explanations. (Item 3)

Applicant is 48 years old. She is single, and has one son and one daughter. She graduated from high school in 1986 and attended university from 2000 to 2003, but she has not yet obtained a degree. (Item 5) Since 2006, Applicant has been employed with her current employer. She completed an application for a security clearance on June 28, 2013. She has never held a security clearance.

Financial

The SOR alleges 28 delinquent accounts totaling approximately \$16,900. (Item 1) In her answer to the SOR, Applicant stated that she denied all medical accounts listed in the SOR because her health insurance company notified her that her personal information may have been accessed in a cyberattack. (Item 4) Based on that incident she refuses to verify the validity of 19 medical debts in the SOR. She also denied the allegations in SOR 1.q, to a university in the amount of \$2,475, and SOR 1.y, to a cable company in the amount of \$1,100.

Applicant claims that the delinquent amount she owes is about \$4,390. The reason for the delinquent debts is a combination of recent unemployment, part-time work, and staying home to care for her son, who is disabled after being shot in the head in 2008. (Item 6)

Applicant did not provide any information to support an assertion that the medical debts were not her debts. In fact, she reported the medical debts in her security clearance application and her subject interview. (Item 5 and 6) In 2014, she provided records relating to her medical debts when answering interrogatories. (Item 7) She also did not give a reason as to why she did not owe the debts in SOR 1.q and 1.y.

Applicant contacted a credit counseling company, but she decided not to complete an agreement because the payments were not manageable. She noted that if she paid that amount for delinquent debts, she could not pay her normal household debts.

Applicant admits that she owes the debt alleged in SOR 1.f for a collection account in the amount of \$238. She stated that it was due to a family emergency that caused loss of time and pay from work. She has not paid the account.

As to the debt alleged in SOR 1.p for a charged-off account in the amount of \$435, she is negotiating payment arrangements. She gave the same explanation for the debt in SOR 1.s for a past-due credit account in the amount of \$90, with a total balance of \$341. Applicant stated that the education loan in SOR 1.r for \$44,401, which is pastdue in the amount of \$1,591, is in negotiations.

Applicant admits that she owes the debt in SOR 1.x in the amount of \$865, but she has not been able to pay it due to her family emergency and loss of pay from work. She could not verify the debt in SOR 1.y in the amount of \$1,100 to a cable company.

Applicant admits her indebtedness to the IRS for tax year 2010 in the amount of \$896 (1.aa) She submitted a 2015 letter that requires her to make payments of \$100 per month to satisfy the delinquent debt. The payments are to be debited from her account each month. The indebtedness to the IRS for tax year 2012 (1.bb) for \$275 is in the same status. She did not provide any proof that the payments were being made.

Applicant admitted during her 2013 subject interview that she had acted in an irresponsible manner by not paying her bills. She believes that the stress of caring for her son caused duress and her inability to pay bills. She wants to pay her bills. (Item 6)

Applicant has a net monthly income of \$2,270. Her personal financial statement reflects, after expenses, she has a negative \$477. She stated that she lives paycheck to paycheck. She now believes that her only option is to file for bankruptcy, which is a legitimate means to resolve debts. However, she has not started the process.

Applicant did not respond to the FORM to provide additional information or documentation concerning the delinquent debts. She provided no information to show that her financial condition has improved or changed.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Applicant incurred delinquent debt. She admits to about \$4,390. Her admissions and credit reports confirm the delinquent debts alleged in the SOR. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulty make it difficult to conclude that it occurred "so long ago." Applicant still has not resolved her delinquent debt. She notes that she is in the process of making payments arrangements as of 2015. Consequently, Financial Considerations Mitigating Condition (FC MC) 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.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant had several traumas that occurred over the past years. Her son was shot in 2008. She had some unemployment and low wages. She could not pay her taxes. She did not provide any documentation to show that she has acted responsibly. She attempted a credit-counseling plan, but she did not have the money to make payments. She has denied all medical accounts based on a cyberattack. She has not acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. FC MC 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 because there are no indications her financial problems are being resolved or under control. She has good intentions to pay her bills, but a promise to pay in the future is not sufficient for mitigation.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 48-year-old woman who is single and has two children. She encountered many challenges that caused her financial difficulties. She has been the sole provider for her family. She has cared for her disabled son who was shot in 2008.

Applicant has not provided sufficient mitigation to mitigate the financial considerations security concerns. She is now contemplating bankruptcy, which is a legitimate means to resolve delinquent debts. However, she has not started the process. She did not submit documentation that she is in fact complying with an agreement to repay taxes to the IRS. She has not established a track record of financial responsibility. She has met her burden of proof in this case.

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-bb:	Against 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge