



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-01318
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

June 7, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on October 26, 2012. (Item 3.) On July 14, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 on September 1, 2006.

Applicant answered the SOR in writing on August 4, 2014, (Answer) and requested a decision by an administrative judge without a hearing. (Item 2.)¹ Department Counsel submitted the Government’s written case (FORM) to Applicant on

¹Item 2 contains three attachments, which Applicant labeled Attachments A, C, and G. She indicated that there is also an Attachment H, but it was not in the file provided to me.

May 4, 2015.² Applicant acknowledged receipt of the FORM July 28, 2015. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant did not submit any additional information within that time. The case was assigned to me on November 23, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 68, and single. She has been self-employed as a defense contractor since March 1985, and seeks to obtain a security clearance in connection with her employment. (Item 3, Section 13A.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this paragraph. Those admissions are findings of fact. She submitted additional information that she submits supports granting her a security clearance.

The SOR lists eight delinquent debts (SOR 1.a through 1.h). The total of the debts alleged in the SOR is approximately \$33,610. The existence and amount of all the debts is supported by credit reports dated November 6, 2012; and December 19, 2013. (Items 5 and 6.) Some of the past-due debts have been delinquent since 2010, according to the available credit reports. The current status of the debts is as follows:

1.a. Applicant admits owing this debt in the amount of \$19,180. She stated in her Answer that the original creditor informed her that they had issued a Form 1099C concerning this debt. Applicant further stated that she had accepted responsibility for this debt and had reached a payment arrangement with the collection agent. She submitted a proposed agreement from the collection agent wherein they agreed to accept monthly payments of \$500 beginning in August 2014 and ending in June 2015. (Attachment A.) Applicant did not submit any evidence showing that she had fulfilled this agreement, which was due to end a month before she received the FORM. Absent any proof of payment, or that it has been otherwise settled, I find that this debt is not resolved.

²Department Counsel submitted six items in the FORM. Item 6 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on November 19, 2012. The summary was never adopted by Applicant as her own statement, or otherwise certified by her to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admissions, it is also cumulative.

1.b. Applicant admitted owing a past-due medical debt in the amount of \$248. She stated in her Answer that she was investigating the debt. No further information was received. This debt is not resolved.

1.c. Applicant admitted owing this past-due debt in the amount of \$79. She submitted evidence showing that she paid this debt after receipt of the SOR. (Attachment C.) This debt is resolved.

1.d. Applicant admitted owing this past-due automobile loan debt in the amount of \$9,932. She further states that the subject automobile was destroyed in a collision and that her insurance company paid the debt. Applicant went on to state that the bank indicated there was no debt and that she should file a dispute with the credit agencies. Applicant indicated that she would do so, but no further information was submitted about this debt. Given the state of the record, I find that this debt is unresolved.

1.e. Applicant admitted owing this past-due debt in the amount of \$3,845. She stated in her Answer that she was in contact with the company and would attempt to make payment arrangements. No further information was submitted about this debt, and I find that it is not resolved.

1.f. Applicant admitted owing a past-due medical debt in the amount of \$254. She stated in her Answer that she was investigating the debt. No further information was received. This debt is not resolved.

1.g. Applicant admitted owing a past-due medical debt in the amount of \$25. She provided documentary evidence showing this debt was paid after receipt of the SOR. (Attachment G.) This debt is resolved.

1.h. Applicant admitted owing a past-due debt to a bank in the amount of \$47. She stated in her Answer that she paid the debt, and had submitted the receipt as Attachment H. As stated, the file provided to me does not have an Attachment H. However, given the *de minimis* amount involved, and in the interest of justice, I find that this debt has been resolved.

Applicant submitted no evidence that she has received any financial counseling. She did not submit a budget, or any other information concerning her income and expenses.

Applicant provided no evidence concerning the quality of her professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. 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 are to be used as appropriate in 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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 overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be negligent, unconcerned, or irresponsible in handling and safeguarding sensitive information.³

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant had over \$33,000 in past-due debts, which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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.” This condition does not apply as Applicant’s financial difficulties have been in existence for several years and largely continue to date.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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

³ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

under the circumstances.” The record does not show any unusual circumstances that would support the application of this mitigating condition.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has submitted evidence showing that she has successfully paid two of the creditors listed in the SOR (1.c and 1.g). As stated, I am also finding allegation 1.h in Applicant’s favor. This mitigating condition has application to those allegations, and they are found for Applicant.

With regard to the remaining allegations, the record is simply insufficient to show mitigation at this time. She still owes at least \$30,000 on her remaining debts. In conclusion, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against 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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which she has not yet resolved. If she is able to successfully resolve her remaining debts, Applicant may be eligible for a security clearance in the future. However, at the present time, Applicant’s conduct with regard to her finances is not mitigated.

Under AG ¶ 2(a)(3), her conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or

duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports denying her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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.

WILFORD H. ROSS
Administrative Judge