



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



In the matter of:

)	
)	ISCR Case No. 14-01482
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel
For Applicant: Christopher D. Thomas, Esq.

04/24/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On October 24, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance for her employment with a defense contractor. (Item 3) On December 17, 2013, Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM). (Items 4 and 5) After reviewing the results of the interview, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On June 13, 2014, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on July 10, 2014. She admitted the six allegations of delinquent debt under Guideline F. She elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on February 11, 2015. Applicant received a complete file of relevant material (FORM) on February 19, 2015, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided additional information in response to the FORM. (Item 7) Department Counsel had no objection to consideration of the additional information. (Item 8) I was assigned the case on April 2, 2015.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 55 years old and has been employed as an administrative assistant for a defense contractor since May 2009. Applicant served on active duty in the Air Force from November 1983 until she retired with an honorable discharge as a master sergeant (E-7) in February 2004. She was a medical information administrator while on active duty. She was eligible for access to classified information for her entire active duty service and while working for the defense contractor. As a medical administrator, she had access to Personal Identifiable Information (PII). She received many awards and decorations for her Air Force service. Her performance evaluations were consistently rated superior. She has an associate's degree awarded in 1982, and has taken additional college level course. She is single with no children. (Item 3, e-QIP, dated October 24, 2013; Item 4, Interview Summary, dated December 17, 2013; Item 7, Response to the FORM, dated March 16, 2015, Exhibits 10 to 19)

The SOR lists, and a credit report (Item 6, dated November 28, 2013) confirms the following delinquent debts for Applicant: a credit card debt charged off for \$6,260 (SOR 1.a); a debt in collection for \$4,843 (SOR 1.b); a charged off debt for \$3,648 (SOR 1.c); a department store debt placed for collection for \$799 (SOR 1.d); a bank debt in collection for \$12,154 (SOR 1.e); and a debt for unpaid federal taxes for tax years 2010, 2011, and 2012 for \$3,437 (SOR 1.f). The total delinquent debt in the SOR is approximately \$31,141. The credit reports show that the delinquent debts were incurred starting in 2007. In her personal subject interview, Applicant also acknowledged approximately eight other delinquent debts not on her credit reports that were also her responsibility. Applicant has not paid or resolved these debts. (Item 4 at 3-6)

Applicant attributes her financial problems to having to assume her parents' debts and to her early retirement from the Air Force to care for her father. Applicant's mother passed away in 1998 and Applicant assumed her parents' debts. While on active duty, she was able to meet both hers and her parents' financial needs. She retired in 2004 to return to her home state to care for her father who was in his early 90s and

unable to care for himself. She was able to meet her and her father's financial requirements because she found immediate employment in the civilian sector. In 2006, her father fell and she was told by the state social services that he could not be left alone. Applicant had to reduce her work hours to manage his care. Her income was reduced and she had to hire a caregiver for her father when she worked. In 2007, because of her reduced salary and the cost of caregivers for her father, she was unable to meet her and her father's financial obligations. Her father died in 2008 and she returned to her normal work schedule and to her normal income. By that time, she had significant debt she had to resolve. Her explanation of the reasons for her financial problems has been consistent from her completion of the e-QIP to her response to the FORM. She stated that her financial problems were the result of being financially overwhelmed and not the result of bad judgment or frivolous spending. (Item 2, Response to SOR and Item 7, Response to FORM)

Applicant presented a Financial Management Plan showing outstanding debts totaling \$124,030. Her net monthly income is \$3,728, with net monthly expenses of \$3,512, leaving a monthly discretionary amount of \$217. She also presented documentation that her federal taxes are current. She presented information on financial counseling she received. She presently does not have any credit cards and does not use credit. All of her purchases are either in cash or by debit card. She intends to resolve her debts and become financially solvent. (Item 7, Response to FORM, Exhibits 3-6)

Applicant claims that the debts at SOR 1.a and SOR 1.c are the same debt. However, she presents no information to verify that the debts are the same. A reading of the credit reports indicates that the debts are different debts. The dates for action on the debts are not the same and the amount of the debt is different. Applicant has the burden to establish that the debts are the same. She has not met that burden.

The creditor cancelled and discharged the debt at SOR 1.a, and gave Applicant a tax form 1099 to have the amount included in her federal tax return. She has paid the taxes on the amount cancelled. SOR debt 1.a is resolved.

Applicant presented information that she is current with her federal taxes. Since Applicant is current with her federal income taxes, the tax debt for tax years 2010, 2011, and 2012 at SOR 1.f is resolved. (Item 7, Response to FORM, Exhibits 5-6)

Applicant presented no other documentation to indicate the debts at SOR 1.b, 1.c, 1.d, 1.e, and the other debts not listed on the SOR, are being paid. Applicant states that she is not actively paying the debts because the creditors are not pursuing the debts. (Item 2 and Item 7)

Applicant noted, in response to e-QIP question 26, that she gambled in 2002 and 2003. She was stationed in a state that had legalized gambling and she visited casinos with her fellow airmen as part of their entertainment and recreation. She is not sure of the amount lost in gambling during that year but believes it was approximately \$40,000.

She used credit cards to fund the gambling. After realizing the amount lost, she stopped going to the casinos. There are no credit card debts attributed to the period of gambling. Accordingly, gambling is not a cause of her financial problems.

Applicant presented 11 letters of character reference and recommendation. The letters were from senior government employees where Applicant presently works, fellow contractor employees, and former Air Force personnel who worked with Applicant on active duty. They note her diligent work ethic and loyalty and integrity to the United States. They all commend Applicant for her honesty, integrity, trustworthiness, and good judgment. They have no reason to question her ability to properly manage classified and sensitive information. (Item 7, Exhibits 2.a to 2.k)

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 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 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 of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

It is well-settled that adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's history of delinquent debts is documented in her credit report, the OPM interview, and her SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt.

The disqualifying condition at AG ¶ 19(i) (compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling) is not raised by the evidence. The SOR does not allege a security concern for gambling. However, the FORM notes a concern for Applicant's history of gambling. Applicant admits to gambling in 2002 and 2003 with significant losses. Applicant's gambling for 2 years over 12 years ago is not a history of

gambling. No delinquent debt is attributed to her gambling losses. Accordingly, I find that Applicant's gambling in 2002 and 2003 is not a security concern.

I considered the Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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;

(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;

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provided documented proof to substantial the basis for the dispute or provide evidence of actions to resolve the issue.

AG ¶¶ 20(a) and (b) partially apply. Applicant's unpaid debts are a continuous course of conduct and thus current. The debts were caused by circumstances beyond her control when Applicant assumed her parents' debts and care. She was able to stay current paying the debts after her mother died in 1998 and after retiring in 2004 to care for her father because she was working fulltime, drawing full salary in her post-retirement job. In 2006, she had less income because she had to work less to care for her father and pay caregivers. She did not act responsibly under the circumstance after her father died in 2008. She has worked at full salary since 2008, but she has not presented any information indicating that she paid any of her past-due debts except for the IRS debt, which has been paid mostly by her refunds. In fact, Applicant acknowledges her responsibility for the debts, but states she is not paying the debts because the creditors are not pursuing the debt.

Applicant provided documentation of financial counseling. However, there is no clear indication that her financial problems are being resolved or under control. AG ¶ 20(c) only partially applies.

AG 20(d) does not apply. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence

to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant pays her current bills as agreed and has discretionary funds each month so that she has the ability to pay her past-due debts. She has not shown a desire to pay the past-due debts or any evidence of payment of those debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant has not presented a reasonable plan to resolve her financial problems. The fact that the creditors are not pursuing the debts is not an adequate reason not to pay the debts. With evidence of delinquent debt and no documentation to support responsible management of her finances, it is obvious that Applicant's financial problems are not under control. Applicant's lack of documented action is significant and disqualifying. Based on the acknowledged debts and the failure to make arrangements to pay her debts, it is clear that Applicant has not been reasonable and responsible in regard to her finances. Her failure to act reasonably and responsibly towards her finances is a strong indication that she may not protect and safeguard classified information. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all relevant 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 access to classified information 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 Applicant's honorable and highly successful career in the Air Force. I considered her evaluation reports and the opinions and recommendations of her supervisors, friends, and co-workers. I considered that she held a security clearance since the start of her Air Force career with no indication of any security issues. However, this favorable information does not overcome Applicant's failure to provide sufficient credible documentary information to show reasonable and responsible action to address delinquent debts and resolve financial problems. Applicant has not demonstrated responsible management of her finances or a consistent record of actions to resolve financial issues. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Eligibility for access to classified information is denied.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.e:	Against Applicant
Subparagraph 1.f:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge