



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



In the matter of:)	
)	
)	ISCR Case No. 14-01943
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. She is delinquent on 2 judgments that total approximately \$12,000, 5 charged-off accounts totaling approximately \$17,000, and 16 delinquent accounts totaling approximately \$63,000. The delinquent debts remain unpaid. Applicant has failed to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 14, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly

¹ Executive Order 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 (AG) effective within the DoD on September 1, 2006.

consistent with the national interest to grant or continue Applicant's security clearance. In an undated response, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated March 12, 2015. The FORM contained three attachments (Items).

On March 25, 2015, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. In a letter postmarked March 20, 2015, five letters as to Applicant's character were received. DC had no objection to the submissions, which were marked and admitted as Applicant Exhibits (Ex.) A through E. On May 1, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admits owing 2 judgments, 16 collection accounts, and 5 charged-off accounts. (Item 1) I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact:

Applicant is a 56-year-old senior systems administrator who has worked for a defense contractor since March 1998 and seeks to retain a security clearance. (Item 2) Applicant's coworkers, friends, and associates state Applicant makes a habit of helping others, is trustworthy, reliable, respectful, supportive, honest, "highly professional," "a stickler for rules and regulations," proactive in the community spending six hours every two weeks volunteering at her church, willing to work weekends and evenings to complete projects, and is a leader. (Exs. A – E)

Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) in November 2013. Applicant listed nine delinquent accounts, which totaled approximately \$38,500. On her e-QIP she stated, "I take full responsibility for the debt and have been working with as many creditors as possible to pay them. Many were not willing to establish payments I could make. I have learned my lesson from this and will not allow this to happen again." (Item 2)

Applicant incurred debt while remodeling her home. At that time, she found the amount of debt to be manageable. (Item 1) Shortly after the remodeling the home's air conditioning/heating unit had to be replaced. Compounding her debt problems was the financial assistance she had to provide to her mother whose own home was in much need of repair. The expenses to her mother's home were kept low by much of the work being done by Applicant and her nephew, but she had to hire the work done beyond their skill level.

After the repairs had been made, Applicant was able to make the minimum payments on her credit cards. However, she was late on one payment resulting in the interest rate on all of her cards being increased. (Item 1) She could no longer make the

minimum payments. She contacted her creditors in hope the creditors would reduce the monthly payment amounts to the previous level. The creditors were not willing to work with her. She hired a debt-management firm that did not help her financial picture. She states the money sent to the debt-management firm would have been better spent paying her creditors. (Item 1) Applicant did not provide documentation showing payment on any of the debts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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 to obtain 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.

Section 7 of Executive Order (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his or her finances to meet their financial obligations.

Applicant has more than \$92,000 of delinquent debt including 2 judgments, 5 charged-off accounts, and 16 collection accounts. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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 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;

(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 initiated a good-faith effort to repay 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 provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant does not fully meet any of the mitigating conditions for financial considerations. Her financial difficulties are both recent and multiple. Her financial problems were contributed to by unexpected home repairs to her home and to her mother's home coupled with the increase in interest rates incurred when she missed a payment. She attempted to work with her creditors, but her efforts were unsuccessful. Even the four smaller debts of less than \$200 each remain unpaid. She provided no evidence she has received credit or financial counseling. She has not demonstrated that her financial problems are under control or that she has a plan to bring them under control. There is no showing of a good-faith effort to satisfy her debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. Applicant would like to pay her bills, but has not done so. Failing to pay the debts casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. There is a limited showing of circumstances beyond her control. The home repairs were unexpected as was the increase in interest rate when a payment was missed. However, AG ¶ 20(b) requires the individual to act responsibly under the circumstances. There is no showing of any payment having been made. She has not acted responsibly.

AG ¶ 20(c) does not apply. Applicant has not received financial counseling. Additionally, there is no clear showing that her financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not disputed any of the delinquent debts. All of the debts are admitted.

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 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 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. The debt set forth in the SOR was not incurred on luxuries, but mainly for home repairs. This is not the type of debt that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. However, Applicant has failed to document any payment on those delinquent obligations. She has been aware of the Government's concern about her delinquent debts since the July 2014 SOR. No delinquent debts have been paid and there is no documentation that Applicant has recently contacted her creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances and facts which would mitigate the financial considerations security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debt. She failed to provide such information, and by relying solely on her paragraphs of explanation in response to the SOR, she failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. In the future, if Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her

past-due obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.w: 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 interests to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge