



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



In the matter of:)	
)	
)	ISCR Case No. 14-01956
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On July 11, 2014, 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 DOD Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); 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. Department Counsel submitted a File of Relevant Material (FORM), dated September 2, 2014.¹ Applicant received the FORM on September 11, 2014. She did not submit additional information for the record. (Appellate EX 1) I received the case assignment on February 3, 2015. Based on a review of the case file, I find Applicant has not mitigated the security concerns raised. Eligibility for a clearance is denied.

¹The Government submitted ten items in support of its case.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations under Guideline F, ¶¶ 1.a-1.b with explanation. (Item 4)

Applicant is 63 years old. She graduated from high school in 1969, and obtained a technical certificate as a medical assistant. (Item 7) She is an administrative assistant for a defense contractor. Applicant has been divorced three times. She has an adult daughter. Applicant is single. She has been employed with her current employer since 1997. Applicant has held a security clearance since 2007. On July 27, 2013, she completed a security clearance application. (Item 5)

The SOR alleges two delinquent debts totaling approximately \$28,000, including a charged-off home-equity loan and a collection account. Credit reports confirm the debts. (Items 8 through 10) As to the two SOR allegations, Applicant asserts that since they are both charged-off, they are resolved.

Applicant explained in her Answer that her financial issues began when she purchased a second home in 2009, for the benefit of her daughter and son-in-law. (Items 4,5, and 7). When Applicant's daughter was unable to pay the mortgage loan note due to a 2010 divorce, Applicant moved into the second home. However, Applicant could not afford both her primary mortgage loans and the second one by 2011.

Applicant noted that she had several refinances over the course of years for home improvements. She purchased her primary residence in 2002. When the housing market dropped, she was in difficulty. She was emphatic that she had no financial problems before the issue with the second home. She lived within her means and was current on her obligations. She also helps her elderly mother. (Item 6) She claims that she is now debt free. (Item 4) She has not had any financial counseling.

In September 2012, during an investigative interview, Applicant explained that since she could not afford both home mortgage loans, the logical thing was to let the primary residence go to foreclosure. She noted that she met with an attorney to decide a course of action, either a short sale or foreclosure. She wanted something that would be simple and liquidate the mortgage loan on the second home. She states that the attorney advised foreclosure. (Item 4) Applicant believes her last mortgage payment was in 2011.

When Applicant answered DOHA interrogatories, she again referred to the two SOR allegations as charged-off accounts and that she plans to take no action on them as they are no longer her responsibility. (Item 7)

Applicant earns approximately \$55,546 annually. She listed her total monthly net income as \$2,416, and her net remainder as \$1,089.32. As part of her assets she listed property worth \$35,000 in another state. She has a 401(k) account and some savings.

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 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

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.

determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to classified 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 security 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. “An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

Applicant’s admissions and credit reports establish the charged-off accounts in the amount of approximately \$28,000. 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 difficulties make it difficult to conclude that it occurred “so long ago.” “An unpaid debt is a continuing course of conduct for the purposes of DOHA adjudications.” ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant still has unresolved delinquent debt. The delinquent obligations remain despite the fact that they are charged off on her credit report. 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.

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’s financial difficulties occurred when a second home that she purchased for her daughter in 2009

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

⁷ *Id.*

was in danger due to her daughter's 2010 divorce. Applicant moved from her primary residence and lived in her daughter's home so that she could help pay the mortgage loan. However, by 2011, she could not afford both mortgage notes. She defaulted on the primary residence and it went to foreclosure. She considers the fact that it is now charged off on her credit report, it is no longer her responsibility. She does not intend to pay either account. She did not act responsibly in this matter. She does not receive mitigation under this guideline.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant presented no information concerning the foreclosure or any attempts that she made to address or resolve the SOR allegations. She stated that she intends to take no action on them since they are charged off. She has not met her burden. She did not present evidence that she received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not apply. Given the ultimate burden, I find that there are doubts about her judgment and responsibility in this case.

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 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. 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 63 years old. She has worked for her current employer since 1997. She has held a security clearance since 2007. There is no evidence in the record of any security incidents. Applicant tried to help her daughter with a home mortgage, but let her primary residence go to foreclosure. She does not intend to take any action on the two SOR debts related to the primary home. She erroneously believes that she has no financial responsibility because they are charged off accounts.

Applicant relied on the written record and did not have a hearing. However, she did not respond to the FORM with any other information. Based on the facts in the record, she has not met her burden of proof. I have doubts about her judgment and responsibility. Applicant has not mitigated the security concerns under the financial considerations guideline.

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:	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 eligibility for a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge