



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



In the matter of:)	
)	
)	ISCR Case: 14-01977
)	
Applicant for Security Clearance)	

Appearances

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

09/18/2015

Decision

DAM, Shari, Administrative Judge:

Applicant failed to provide evidence that she paid or resolved any of the nine alleged delinquent debts. She filed her 2011 and 2012 Federal income tax returns in 2014. Resulting financial security concerns were not mitigated. Eligibility for access to classified information is denied.

Statement of Case

On September 27, 2013, Applicant submitted a security clearance application (SF-86) for a reinvestigation. On July 1, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant submitted an answer to the SOR on August 15, 2014. (Answer.) In a separate email to a DoD adjudicator, she requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On March 13, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was provided to Applicant on April 22, 2015, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on May 4, 2015, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). She provided no additional information in response to the FORM within the 30-day period. DOHA assigned the case to me on August 3, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted ten of the eleven debts alleged in Paragraph 1 of the SOR. She denied the debt alleged in Paragraph 1.k. (Item 1.) Those admissions are incorporated into these findings.

Applicant is 48 years old and has worked for a defense contractor since February 2006. She has held a security clearance during her employment. She is married, but separated. (Item 1.)

Based on credit bureau reports (CBR) from November 2013 and March 2015, the SOR alleged nine delinquent debts totaling \$6,012, dating back to 2010. The SOR also alleged that Applicant failed to file Federal income tax returns for 2011 and 2012. (Items 1, 3 and 4.)

The March 2015 CBR also reported four new debts, which were not alleged in the SOR. They are: a delinquent medical debt for \$165; a past due cell phone debt for \$3,080; an automotive credit card charged off account for \$2,638; and a charged off automobile loan for \$4,300. Those debts total \$10,183.¹ (Item 4.)

Applicant submitted proof that she filed both her 2011 and 2012 Federal tax returns in March 2014. She received a refund of \$5,779 for the 2012 taxes, which was offset with a \$3,363 payment for unpaid 2009 taxes; \$1,190 for unpaid 2010 taxes; and \$952 toward a tax liability of \$2,986 for 2011. She received a \$7,538 refund from her 2013 federal taxes, which was offset with a \$2,034 payment for the 2011 taxes. (Answer.) Applicant did not provide proof that she resolved or is resolving any of the nine debts alleged in the SOR.

¹The SOR does not allege these new debts. Any matters that were not alleged will not be considered in an analysis of disqualifying conditions. They may be considered in my analysis of mitigating conditions and the whole-person concept.

There is no evidence that Applicant obtained credit counseling or sought financial assistance within the past couple years. She did not provide a budget or a plan to resolve the delinquent debts. She submitted no evidence concerning the quality of her professional performance, the level of responsibility his duties entail, or her track record with respect to handling sensitive information and observation of security procedures. She provided no character references describing her judgment, trustworthiness, integrity, or reliability.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant's delinquent debts began accumulating in 2010. She has been unable or unwilling to satisfy or resolve them over the past five years. She failed to timely file Federal income tax returns for 2011 and 2012. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's nine delinquent debts started accumulating in or about 2010 and are unresolved. Because Applicant failed to submit proof that she is addressing any of the debts, she did not demonstrate that such problems are unlikely to continue or recur. Her reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not provide mitigation under AG ¶ 20(a).

Applicant did not submit evidence to demonstrate that her financial problems arose as a result of circumstances beyond her control. She failed to provide evidence that she acted responsibly while the debts were accumulating. AG ¶ 20(b) does not apply.

Applicant has not participated in financial or credit counseling, and there are no clear indications that her delinquent debts are under control; thus, AG ¶ 20(c) does not apply. She did not provide documentation to demonstrate that she made a good-faith effort to resolve any of the nine SOR-listed debts. Hence, AG ¶ 20(d) does not apply to the unresolved debts. She did provide evidence that she filed her 2011 and 2012 Federal income taxes in 2014 and subsequently paid any outstanding taxes. AG ¶ 20(d) provides some mitigation for the previously unfiled 2011 and 2012 Federal income tax returns. There is no evidence that Applicant successfully disputed the debt alleged in SOR ¶ 1.k, which she asserted is not her debt. AG ¶ 20(e) does not apply.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is 48 years old and has participated in the security clearance process previously. She has worked for a defense contractor since February 2006. She has a history of financial problems. She filed her Federal income tax returns for 2011 and 2012 in 2014. Although she acknowledged that she is responsible for eight of the nine SOR-alleged debts, she did not present credible evidence that she is resolving them or has a budget and plan for addressing them. The evidence indicates that she more recently accumulated four additional delinquent debts, which are unresolved. Her delinquent debts total about \$16,000. Based on the evidence, there is a likelihood that similar problems will continue, raising questions about her judgment and reliability. Overall, the record evidence leaves me with doubt as to Applicant's eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

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
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c through 1.k:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge