



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



In the matter of:)	
)	
)	ISCR Case No. 14-02386
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

June 11, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on December 30, 2013. On August 29, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 after September 1, 2006.

Applicant acknowledged receipt of the SOR on September 29, 2014. She answered the SOR in writing on October 29, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on January 21, 2015. DOHA issued a notice of hearing on January 21, 2015, and I initially convened the hearing as scheduled on February 18, 2015. However, Department Counsel amended

the SOR at that session; and as a result, the matter was continued until April 14, 2015. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on her own behalf and submitted Exhibits (AppXs) A through C, which were received without objection. DOHA received the transcript of the hearing (TR) on April 24, 2015. I granted Applicant's request to keep the record open until May 14, 2015, to submit additional matters. On May 13, 2015, she submitted Exhibit D, which was received without objection. The record closed on May 15, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding Subparagraph 1.n., alleging Applicant is indebted to a state income taxing authority in the amount of \$6,800 as the result of a tax lien, which she admits.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations, except for Subparagraphs 1.e., (which is the same as 1.c.); and 1.i., which she denied.

Guideline F - Financial Considerations

Applicant is a 43 year-old "Administrative Secretary," working in the aerospace industry. (TR at page 16 lines 10~15.) Applicant readily admits that she has a negative monthly cash flow. (TR at page 20 lines 6~23.) She attributes her current financial difficulties to not having enough federal and state taxes withheld from her monthly pay check, beginning in 2007. (TR at page 21 line 4 to page 23 at 21.)

1.a. Applicant is indebted to the Internal Revenue Service, as the result of a 2011 tax lien, in the amount of about \$19,650. She avers that she had been making monthly payments of \$100 towards this federal tax lien, and increased this amount to \$350 on March 30, 2015. (TR at page 23 line 22 to page 24 line 13.) However, despite having been given a month to do so, Applicant has submitted nothing in support of her averment. This allegation is found against Applicant.

1.b.~1.e. Applicant is indebted to Creditor B in an amount totaling about \$2,142. She has been proactive in settling these accounts, and is making a monthly payment of \$89.64 towards the settled amounts. (TR at page 33 line 1 to page 38 line 6.) This is supported by documentation vis-a-vis this creditor. (TR at page 47 line 18 to page 48 line 20, AppX A at pages 6~7, and AppX C.) These allegations are found for Applicant.

1.f. Applicant is indebted to Creditor F in the amount of about \$395. She has yet to address this debt; and as a result, it is found against Applicant. (TR at page 38 lines 7~16.)

1.g. Applicant has paid her motor vehicle citation to city G in the amount of about \$185, as evidenced by correspondence with city G. (TR at page 38 lines 7~16, and AppX A at pages 1~2.) This allegation is found for Applicant.

1.h. Applicant is indebted to Creditor H in the amount of about \$86. She avers she has “paid” this debt. (TR at page 39 line 17 to page 40 line 12.) However, despite having been given a month to do so, Applicant has submitted nothing in support of her averment. This allegation is found against Applicant.

1.i. Applicant disputes the alleged \$84 debt to Creditor I, averring that she can offer a dispute letter in this regard. (TR at page 40 line 13 to page 41 line 11.) As this debt does appear on the Government’s January 2014 credit report; and as Applicant has submitted nothing further in this regard, this allegation is found against Applicant. (GX 2 at page 10.)

1.j. Applicant is indebted to Creditor J in the amount of about \$71. She has yet to address this debt; and as a result, it is found against Applicant. (TR at page 41 line 12 to page 42 line 12.)

1.k. Applicant is indebted to Creditor K in the amount of about \$63. She avers she has “reached out to them” vis-a-vis this debt. (TR at page 42 line 13 to page 43 line 5.) However, despite having been given a month to do so, Applicant has submitted nothing in support of her averment. This allegation is found against Applicant.

1.l. Applicant has paid her debt to the U.S. Postal Service in the amount of about \$55, as evidenced by correspondence from the U.S. Postal Service. (TR at page 43 line 6 to page 44 line 5, and AppX A at pages 3~5.) This allegation is found for Applicant.

1.m. Applicant is indebted to Creditor M in the amount of about \$47. She avers she is “going to take care of” this debt. (TR at page 44 lines 6~16.) However, despite having been given a month to do so, Applicant has submitted nothing in support of her averment. This allegation is found against Applicant.

1.n. Applicant is indebted to a state income taxing authority, as the result of a tax lien, in the amount of about \$6,800. She is making weekly payments of \$50 towards this state tax lien, as evidenced documentation from the state taxing authority and from her employer. (TR at page 24 line 18 to page 26 line 25, at page 30 line 4 to page 32 line 13, and AppX A the last three pages.) This allegation is found for Applicant.

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 are useful 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. (AG Paragraph 2.) The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to 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 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.

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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG Paragraph 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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 19(a), an "*inability or unwillingness to satisfy debts*" is potentially disqualifying. Similarly under Subparagraph 19(c), "*a history of not meeting financial obligations*" may raise security concerns. Applicant has significant admitted past-due debts, many of which she has not yet resolved. I can find no countervailing Mitigating Condition that is applicable here.

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 circumstances. Under AG Paragraph 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 should also consider the nine adjudicative process factors listed at AG Paragraph 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 all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant is well thought of both in her community and at her work place. (AppX B and D the last two pages.) However, the

record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. Applicant has failed to submit documentation in support of her in-court averments. For this reason, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from her Financial Considerations.

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.	Against Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	Against Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	Against Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	Against Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	Against Applicant
Subparagraph 1.n.	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.

Richard A. Cefola
Administrative Judge