DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-03469
	)	
	)	
Applicant for Security Clearance	)	

Appearances

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

09/30/2015

Decision

WHITE, David M., Administrative Judge:

Applicant owes more than $29,000 in unresolved delinquent debts that she incurred over the past ten years. She offered no evidence of either ability or willingness, under her current financial circumstances, to resolve these obligations. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on March 17, 2014.[1] On November 10, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).[2] The action was taken under

[1]Item 2.

[2]Item 1.

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted her written response to the SOR on December 13, 2014, and requested that her case be decided by an administrative judge on the written record without a hearing.[3] Department Counsel submitted the Government's written case on April 30, 2015. A complete copy of the File of Relevant Material (FORM)[4] was provided to Applicant on April 30, 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 for receipt of the FORM on May 6, 2015, and timely submitted additional material in response to the FORM, to which Department Counsel had no objection. This response to the FORM, with three enclosures, is admitted as Applicant's Exhibit (AE) A. I received the case assignment on June 18, 2015.

Findings of Fact

Applicant is 32 years old, and has worked full time as an administrative or accounting assistant since January 2010. She began her current position with a defense contractor in February 2014. She never married, and has twin sons born in February 2005. She has no former military service or Federal Government employment, and has never held a security clearance. She was unemployed from July 2004 to August 2007 because she "stopped working to have twin boys." She attended a major university full and part time from August 2001 to June 2007, and a community college part time from September 2008 to at least March 2014, without earning a degree from either institution.[5]

In her response to the SOR, Applicant admitted the truth of allegations concerning seven of her delinquent debts,[6] and formally denied the remaining allegations with some explanations.[7] She also admitted owing several other alleged debts in her FORM response, as discussed below. Applicant's admissions are incorporated as findings of fact.

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[3]Item 1.

[4]Department Counsel submitted four Items in support of the SOR allegations. Item 3 is a part of the Office of Personnel Management (OPM) Report of Investigation. It is a summary of Applicant's unsworn interview with an OPM investigator on April 15, 2014. It is not admissible in evidence since it was neither adopted by Applicant nor authenticated by a witness. Its contents will not be considered. (Directive ¶ E3.1.20.)

[5]Item 2.

[6]She formally admitted SOR ¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.k, and 1.l.

[7]Item 1.

Applicant incurred substantial debt to the major university she attended despite numerous grants and student-employment opportunities. In 2009, the university turned her account over to a collection agency with a balance in excess of $17,000. That agency sued, and obtained a judgment for $9,486 against her on this debt in November 2012. In her answer to the SOR, she correctly explained that the debts alleged in SOR ¶¶ 1.a, 1.m, and 1.n were all based on different reports to credit agencies by the collection agency concerning this same debt. She acknowledged that she had not made payment toward this judgment, and estimated that the debt had grown to about $14,000 with post-judgment interest. She further stated that payment arrangements had been made, but provided no documentation to support that claim.[8]

The allegations in SOR ¶¶ 1.b and 1.k refer to the same $578 telephone bill that was placed for collection by the service provider in January 2014 after it became delinquent in November 2012. The collection agency reported in March 2014 that the outstanding balance was $288. It is unclear how the balance was reduced, since Applicant said in her SOR response that she would start paying on this bill in February 2015. Her response to the FORM provided no additional details concerning this debt.[9]

Applicant admitted owing the consumer and medical debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, and 1.l, which total $7,848. She said in her SOR response that she would make payments toward these debts beginning in January or March 2015, but provided no proof of any such payments in her June 2015 response to the FORM.[10]

Applicant originally denied the debts to a cable service provider that were alleged in SOR ¶¶ 1.g and 1.p, but later correctly identified them to be separate reports concerning the same $417 debt made by the provider and the collection agency with whom the provider placed the account for collection in December 2013. Applicant denied this debt in her SOR response, and said in her FORM response that she was unable to substantiate this debt. However, she reported it as an outstanding $414 debt that she intended to resolve by June 2014 on her SF 86, and provided no subsequent information to support a valid basis to dispute its validity.[11]

Applicant claimed that the $414 debt alleged in SOR ¶ 1.o was for cable service to an address in another state where she never lived, and felt it was a matter of identity theft. Whether this was an erroneous entry on her credit report or just another listing of the cable service debt discussed above, I find that it is not a valid separate debt supporting any additional security concerns.[12]

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[8]Item 1; Item 4; AE A.

[9]Item 1; Item 4; AE A.

[10]Item 1; AE A.

[11]Item 1; Item 2 at 33; Item 4; AE A.

[12]Item 1; Item 4.

Applicant denied the debts alleged in SOR ¶¶ 1.h, 1.i, and 1.j in her SOR response, stating that she was unable to contact the companies involved to find out if they were her debts. In her FORM response, she said that the first and third of them were medical debts arising from emergency room visits for her sons, but offered no evidence of any effort to resolve them. These debts total $689 according to Item 4.[13]

Applicant also denied the debts alleged in SOR ¶¶ 1.q, 1.r, and 1.s, stating that representatives of the creditors informed her that she was no longer indebted to them. She provided no evidence to substantiate these claims, or to otherwise prove a valid basis to dispute them. Each of these debts is reflected on her April 2014 credit report.[14]

Applicant denied that the debt alleged in SOR ¶ 1.t resulted from an eviction, claiming that she left the rental apartment voluntarily after being served a notice to vacate. She admitted owing the back rent of $5,775, as alleged in the SOR.[15]

Applicant provided no evidence of financial counseling, or of family budget information that would indicate that she can resolve existing debts or avoid additional financial delinquencies. The record lacks evidence concerning the quality of Applicant's professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing her judgment, trustworthiness, integrity, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), 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.

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[13]Item 1; Item 4. AE A.

[14]Item 1; Item 4; AE A.

[15]Item 1.

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 under 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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant owes more than $29,000 in unresolved delinquent debts that she incurred over the past ten years. She offered no evidence of either ability or willingness, under her current financial circumstances, to resolve these obligations. Her ongoing pattern and history of inability or unwillingness to pay lawful debts raise security concerns under DCs 19(a) and (c), and shift 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 has incurred substantial delinquent debts, which continue to date. She offered insufficient evidence from which to establish a track record of debt resolution. She failed to demonstrate that conditions beyond her control contributed to her financial problems, or that she acted responsibly under such circumstances. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning a delinquent debt, and Applicant admitted owing the vast majority of the debts alleged in the SOR. Accordingly, the record is insufficient to establish mitigation under these provisions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her delinquent debts arose over the past ten years and remain largely unresolved, despite her recent years of full-time employment. She provided no current budget information demonstrating an ability to resolve these debts or avoid additional financial duress. She offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of her life to offset resulting security concerns. The potential for pressure, coercion, and duress from her financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her 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.m:	Against Applicant
Subparagraphs 1.n through 1.p:	For Applicant
Subparagraphs 1.q through 1.t:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge