



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



In the matter of:)
)
) ISCR Case No. 14-03777
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/22/2015

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems appear to be, in part, due to circumstances beyond her control. Notwithstanding, she failed to present sufficient evidence to show that she acted responsibly under the circumstances, and that her financial problems are resolved or under control. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 14, 2013. On September 24, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on October 14, 2014, and elected to have her case decided on the written record.

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), dated January 26, 2014, was provided to her by transmittal letter dated January 30, 2014. Applicant received the FORM on February 2, 2015. She was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant's response was due on March 3, 2015. She did not respond to the FORM or provide any information in mitigation or extenuation.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.l, 1.o, 1.p, and 1.u. She denied the allegations in SOR ¶¶ 1.m, 1.n, and 1.q through 1.t. Her admissions are incorporated as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 46-year-old executive assistant working for a government contractor. She graduated from high school in 1986. She married her current husband in 2011. She has two prior marriages from 1987 to 1993 and from 1994 to 1999. She has two adult sons, ages 27 and 24, and a stepson, age 25. Applicant honorably served on active duty in the U.S. Army from November 1986 until April 1987. She then served seven years in the Inactive Ready Reserve.

Applicant worked for her current employer, a government contractor, from April 2000 to May 2011. She voluntarily left her employment in May 2011. She went back to work part time for her current employer from about November 2011 until she was brought back to work full time in April 2012.

Applicant disclosed in Section 26 (Financial History) of the 2013 SCA that she had financial problems that included some of the judgments and delinquent debts alleged in the SOR. The subsequent background investigation and credit reports disclosed the 21 delinquent SOR debts, totaling over \$21,000. Applicant admitted 15 of the SOR debts, totaling over \$15,000.

Applicant stated in her 2013 SCA that her financial problems resulted from a reduction of her working hours, which resulted in a 20 percent reduction in pay, and her period of unemployment. She indicated that she intended to request her credit report, and once she received it, she would start addressing her delinquent debts.

Applicant explained during her December 2013 interview that she stopped working in May 2011 because she needed a break from stress and she wanted to pursue other opportunities. While unemployed, or partially employed, she was supported by her husband. During this period, Applicant also visited her mother who was ill in another state.

Applicant told the investigator that the 15 admitted SOR debts were caused by her cut in pay, loss of income, and her period of unemployment. She claimed that the six delinquent debts she denied were the result of identity theft. She averred that she

has never lived in the state where the debts were incurred. She disputed one delinquent debt from that state (not alleged in the SOR) with the assistance of an attorney. (FORM, Item 4) She averred that she intended to dispute the remainder of the debts from that state.

Applicant told the government investigator that she had a lot of delinquent medical bills. She claimed that she had a brain aneurism mid-to-late 2011, and accumulated around \$17,000 in medical debts because she did not have the money to pay them. She indicated she intended to pay her small delinquent debts first, and then address the remaining debts one by one. Applicant also claimed that she was involved in a car accident with a drunk driver in May 2013, had to purchase a car, and acquired a car payment. She was trying to resolve the car accident out of court.

Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income, her monthly expenses, whether her husband currently works or if she is the only breadwinner in the family, and whether her current income is sufficient to pay her current day-to-day living expenses and her debts. There is no information to indicate whether she participated in financial counseling or whether she follows a budget.

Applicant presented documentary evidence of one disputed account (not alleged in the SOR). She presented no other documentary evidence of any disputes filed with any creditors or through the credit bureaus, or of any criminal complaints filed by her alleging identity theft. Applicant presented no documentary evidence of contacts with any of the SOR creditors, of payment arrangements established, or payments made toward any of the debts alleged in the SOR since she first acquired them.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

Applicant admitted and the credit reports established 15 of the delinquent debts alleged in the SOR. The remaining six debts that she denied are established by the credit reports. AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations," apply.

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

- (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.

Considering the evidence as a whole, I find that financial considerations mitigating conditions AG ¶ 20(b) partially applies, but does not fully mitigate the financial considerations security concerns. Applicant's financial problems appear to be, in part, due to circumstances beyond her control – her 2011 aneurism and her period of underemployment or unemployment between May 2011 and April 2012.

Notwithstanding, she failed to present sufficient evidence to show that she acted responsibly under the circumstances. She presented little documentary evidence of any payments made, contacts with creditors, or efforts to otherwise resolve any of the delinquent debts alleged in the SOR. (She disputed one debt not alleged in the SOR.) Applicant claimed that she intended to dispute six SOR debts. However she did not present any documentary evidence of any disputed debts, or of any criminal complaints filed by her for identity theft.

Moreover, Applicant provided little information about her current earnings and financial position. She did not provide any information about her monthly income, monthly expenses, whether her husband works or if she is the only breadwinner in the family, and whether her current income is sufficient to pay her current day-to-day living expenses and debts. There is no information to show that she participated in financial counseling or that she follows a budget. The available information is insufficient to establish clear indications that her financial problems are being resolved or are under control. Applicant presented no reasonable plan to address her delinquent debts. The remaining mitigating conditions are not applicable to the facts in this case.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant failed to submit documentary evidence to show that she acted responsibly under the circumstances and that her financial problem is being resolved or is under control. She failed to mitigate the Guideline F 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, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a -1.u:	Against Applicant
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Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge