



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No: 14-06821
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Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

04/29/2016

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated over \$31,000 in delinquent debts that she incurred between 2010 and 2014. She provided evidence that she resolved or is resolving about \$10,000 of that amount. She did not demonstrate that she has a workable plan or budget to resolve the remaining debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On April 22, 2014, Applicant submitted a security clearance application (SF-86). On August 27, 2015, 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; DOD 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 answered the SOR on October 9 and 10, 2015 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On November 19, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on November 20, 2015, and received by her on December 27, 2015. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. She timely submitted a letter with attachments, which I marked as Applicant Exhibit (AE) A and admitted into the record without objection. Applicant did not submit any objections to the Government's Items; hence, Items 1 through 6 are admitted into evidence. DOHA assigned the case to me on March 29, 2016.

Findings of Fact

In her Answer Applicant admitted 19 of the 51 allegations of delinquent debts contained in Paragraph 1 of the SOR, and denied the remaining 32 allegations. (Item 1.)

Applicant is 43 years old, and divorced for the second time in 2009. She has three children, ages 22, 11, and 3. She obtained a bachelor's degree in 2005. Since 2014 she has worked for a federal contractor. She was unemployed from April 2013 to February 2014, some of which time she was pregnant with her third child. (Item 2.)

Based on credit bureau reports (CBRs) from May 2014, July 2015, and November 2015, the SOR alleged 51 delinquent debts, which totaled \$31,072. The debts became delinquent between 2010 and 2014. (Items 3, 5, 6.) Applicant disclosed several delinquent debts in her April 2014 SF-86 and attributed them to a period of financial hardship. She indicated that she unsuccessfully attempted to work with a debt advisor to help resolve some debts. She stated that she was contacting all of her creditors and was making payments on her debts. (Item 2.)

In her October 2015 Answer, Applicant denied 32 debts on the basis that she paid some, was paying others, or could not locate the creditor or the debt. She included proof that she paid the state tax lien for \$1,916 in March 2014. (SOR ¶ 1.x; SOR ¶ 1.yy is a duplicate of said debt.) In her response to the FORM, she submitted proof that she paid: SOR ¶ 1.a for \$2,311 (AE A at 7.); SOR ¶ 1.z for \$1,745 (AE A at 11.); and SOR ¶ 1.aa for \$1,745 (AE A at 4.). She provided proof that she is paying the debt in SOR ¶ 1.kk for \$388 (AE A at 9-10.). She also submitted proof of payment of a judgment owed to Portfolio Recovery, but that document does not reference an amount or identify the original creditor. (AE A at 2-3.)

In her Answer and response to the FORM, Applicant stated she is paying her delinquent debts when money is available. She said she could not find all of the documentation pertinent to her various payments. (AR; AE A at 1.)

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(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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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."

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of incurring delinquent debt. From 2010 to 2014, she accumulated at least 50 delinquent accounts totaling over \$31,000. Her ongoing pattern of delinquent debt, and history of inability or unwillingness to pay lawful debts, raise security concerns under the above disqualifying conditions, 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;

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 delinquent debts have been ongoing since 2010, the majority of which remain unresolved, and cast some doubts about her reliability. The evidence did not establish mitigation under AG ¶ 20(a).

Applicant stated that she accumulated delinquent debts as a consequence of a financial hardship and a period of unemployment. Those may have been circumstances beyond her control. However, in order to establish full mitigation under AG ¶ 20(b), she needed to produce evidence that she acted responsibly under those conditions, which she did not do. Nor did she submit evidence of financial counseling, a budget, or other information from which to determine a track record of debt resolution and show indications that her financial problems are under control. Hence, AG ¶ 20(c) does not apply. She submitted evidence that she paid or is paying 6 of the 51 SOR-alleged debts, indicating that she is trying to initiate a good-faith effort to resolve some debts. AG ¶ 20(d) has application as to those debts. Although she denied many debts, she did not provide sufficient evidence that she formally disputed them or is resolving them as she stated which evidence is necessary to establish mitigation under AG ¶ 20(e).

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 a 43-year-old woman, who has worked for a federal contractor since 2014. The SOR listed 51 delinquent debts that arose between 2010 and 2014 totaling about \$31,000, of which Applicant provided proof that she has resolved or is resolving about \$10,000 of that amount. She stated in her Answer that she has payment plans or paid several other debts but is unable to locate the pertinent documentation. While she demonstrated that she has taken important steps toward resolving some debts, she has not yet established a track record of resolving debt or provided a budget or organized plan demonstrating an ability to continue addressing them. There is no evidence of financial counseling. The potential for pressure, coercion, and duress from her financial situation remains undiminished. Overall, the record evidence leaves me with sufficient 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraph 1.y:	Against Applicant
Subparagraphs 1.z and 1.aa:	For Applicant
Subparagraphs 1.bb through 1.jj:	Against Applicant
Subparagraph 1.kk:	For Applicant
Subparagraphs 1.ll through 1.xx:	Against Applicant
Subparagraph 1.yy:	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.

SHARI DAM
Administrative Judge