



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



In the matter of:)	
)	
)	ISCR Case No. 11-07817
)	
)	
Applicant for Security Clearance)	

Appearances

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

February 15, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of financial indebtedness due to long periods of unemployment or underemployment, periods of receiving late pay checks, medical problems, and the national recession. She does not have the funds to satisfy her debts on her current income. She has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 6, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 on September 1, 2006.

Applicant's Answer to the Statement of Reasons (Answer) was dated August 9, 2012. Applicant elected to have the case decided on the written record in lieu of a hearing in her Answer. Department Counsel submitted the Government's written case on November 16, 2012. A complete copy of the file of relevant material (FORM) was received by Applicant on November 26, 2012. She was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. On January 17, 2013, applicant submitted a nine page response (Response). Department Counsel did not object to Applicant's Response and it was admitted into the record. The case was assigned to me on February 8, 2013.

Findings of Fact

Applicant is 65 years old. She worked as a civilian employee for the U.S. Coast Guard from December 1965 to August 1969. She was married in 1965 and divorced in 1978. She did not identify any children on her Electronic Questionnaires for Investigations Processing (e-QIP). However, in her Response and answers to interrogatories, she indicated she had an adult daughter and two adult sons. (Response; Item 5; Item 6.)

From 1993 through 2003, Applicant was employed. During this period, Applicant was the primary income earner in a household of five (including her adult daughter, adult niece, and two minor grandchildren). Her weekly income was \$640. On this income, she was only able to afford food, rent, utilities, and her car payment. She "struggled with paying basic living expenses, filed federal and state tax returns" but she "could not afford to make a payment on or clear amount[s] owed." Each year, Appellant found herself deeper in tax debts owed to both state and Federal taxing authorities. In 1998, she also experienced an undisclosed medical problem that exacerbated her financial difficulties. Additionally, from 1999 to 2003, her employer unpredictably delayed salary payments, which added to her hardship. (Response; Item 4; Item 5; Item 6.)

Applicant was unemployed from January 2004 through March 2005. During that time, she was financially supported by her "sons, daughter, a friend, and [her] church," because she was ineligible for unemployment compensation. (Response; Item 5; Item 6.)

She was employed as a contractor from March 2005 to December 2006, when her contract was terminated. She indicated in her Response that she attempted to "clear" obligations that she failed to satisfy during her previous unemployment with the funds from this job. She provided no documentation to support this assertion. (Response; Item 5; Item 6.)

Applicant claims she has been unemployed since December 2006. She indicated she "filed for and received 26 weeks of unemployment compensation beginning January 2007 through its ending June 2007." She also worked temporary assignments in 2007 and had short-term employment in 2008. However, she was unable to secure a full-time position due to the U.S. economic crisis in 2007 and 2008. Applicant failed to list her

temporary periods of employment on her E-QIP because they were “30 or 90 days.” Instead, Applicant listed self-employment from December 2006 to present. In her Response, she explained her “self-employment” was a volunteer activity which she undertook to help honor students from low-income families. She earned no income from her volunteer work. Her unemployment compensation and meager income from her temporary assignments left her homeless for three years, during which she resided with relatives. (Response; Item 5; Item 6.)

In 2009, Applicant began receiving social security. She currently receives \$619 per month in social security income and “it is just enough to sustain [her].” She does not receive any assistance from her children, but could request help from them if she needed it. However, she has no funds available to satisfy her delinquent debts she incurred in the past. (Response.)

The SOR lists 19 delinquent debts totaling over \$37,000, including state and Federal tax obligations totaling almost \$20,000. These debts are documented on credit reports dated February 23, 2011, June 11, 2012, and April 6, 2012. These debts are as follows. (Item 7; Item 8; Item 9.)

Applicant is indebted on a vehicle loan in the amount of \$13,412, as alleged in SOR ¶ 1.a. The vehicle was repossessed for nonpayment in 2008. A judgment was issued against Applicant on September 12, 2008 for this debt. It remains unsatisfied. (Response; Item 7; Item 8; Item 9; Item 10.)

Applicant admitted she is indebted to the Federal Government in the approximate amount of \$4,000 for unpaid taxes, interest, and penalties, as alleged in SOR ¶ 1.b. She intends to pay it when she is able. (Response; Item 4; Item 6.)

Applicant is indebted on state taxes for the tax years 1996, 1997, and 1999, in the total amount of \$8,376.44 as alleged in SOR ¶¶ 1.c through 1.e. Tax liens were filed against Applicant by the same state for: \$3,126 in June 1999 (allegation ¶ 1.f); \$966 in November 2000 (allegation ¶ 1.g); \$764 in August 2006 (allegation ¶ 1.h); \$435 in August 2006 (allegation ¶ 1.i); \$946 in September 2007 (allegation ¶ 1.j); and \$1,046 in August 2010 (allegation ¶ 1.k). Applicant admits these debts and acknowledges that she has taken no action to satisfy them. (Response; Item 6.)

Additionally, Applicant is indebted on eight delinquent medical debts alleged in SOR ¶¶ 1.l through 1.s. These debts total \$4,532. She indicated that the medical debts were incurred due to medical emergencies in November 2007 and November 2008. She acknowledged that she still owes all of these debts. (Response; Item 6; Item 7; Item 8; Item 9.)

Applicant has not attended financial counseling. She attempts to live within her means by living on a budget and not using credit cards. (Item 6.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines in conjunction with the factors listed in 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 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 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, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 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 AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts including a significant amount of tax debt. She has been unable to pay any of her obligations on her social security income. She has experienced problems paying her tax obligations since 1996, without resolution, and continued to amass additional consumer and tax debts as recently as 2007. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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.

The evidence does not show that Applicant has resolved any of the debts alleged in the SOR. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant explained in her Response that she incurred her debts as a result of long periods of unemployment or underemployment, problems with late pay, medical problems, and the national recession. These were circumstances beyond her control. However, to be applicable AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant does not have the funds available to make any payments, even on the smallest debts, despite her intentions to eventually do so. I am unable to make a determination that she acted responsibly under the circumstances.

Applicant did not attend any financial counseling. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve her delinquent debts. The record fails to establish that any payments have been made on any of her debts. AG ¶ 20(d) is not applicable.

Applicant presented no evidence to show that she was in the process of formally disputing any of her debts or that she had successfully disputed any of her debts in the past. AG ¶ 20(e) is not applicable.

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. 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is unable to address her financial delinquencies and has failed to do so. While she has experienced numerous events beyond her control that left her financially destitute, her financial situation at the present time does not permit her to satisfy her delinquent accounts in the foreseeable future. Accordingly, continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations 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
Subparagraphs 1.a-1.s:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge