



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



In the matter of:

)	ISCR Case No. 11-08747
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2013

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On February 2, 2011, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for her employment with a defense contractor. (Item 4) She was interviewed by a security investigator on March 17, 2011, and verified the accuracy of the interview summary on August 7, 2012. (Item 5) On August 31, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant received the SOR on September 21, 2012 (Item 2). Applicant answered the SOR on October 16, 2012, admitting 15 and denying 3 of the allegations under Guideline F. She elected to have the matter decided on the written record. (Item 3) Department Counsel submitted the Government's written case on December 27, 2012. Applicant received a complete file of relevant material (FORM) on February 8, 2013, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. She provided additional information in response to the FORM on March 2, 2013. The case was assigned to me on March 12, 2013.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 54 years old and has worked for a defense contractor as a procurement specialist since August 1999. Applicant served on active duty in the Marine Corps as a warrant officer for over 21 years from June 1977 to March 1998. She received an honorable discharge when she retired. She has been eligible for access to classified information since her Marine Corps service. She has never married. Her personal financial statement shows net monthly pay of \$5,802, and monthly retired pay of \$2,253, for a total net monthly income of \$8,055. She lists \$5,396 in net monthly expense, leaving \$3,584 in monthly discretionary income. It is noted that over \$2,000 of the discretionary income goes to a savings account. (Item 6) Applicant considers her current financial situation as stable with an annual income of approximately \$103,000. She lives within her means. (Item 5 at 4)

Credit reports (Item 8, dated June 6, 2012; and Item 9, dated February 16, 2011) show the following delinquent debt for Applicant; \$30 each on eight medical accounts (SOR 1.a, SOR 1.b, SOR 1.c, SOR 1.e, SOR 1.f, SOR 1.g, SOR 1.h, and SOR 1.i); \$6 on a medical account (SOR 1.d); \$2,558 in collection on a credit card (SOR 1.j); \$36,775 in collection on a loan (SOR 1.k); \$375 in collection on a phone bill (SOR 1.l); \$42 in collection to a town for medical services (SOR 1.m); \$2,429 in collection for a utility company (SOR 1.n); \$445 in collection for a mail-order company (SOR 1.o); \$448 in collection for a telephone company debt (SOR 1.p); \$2,546 for a state tax lien (SOR 1.q); and \$21,839 in past-due federal taxes (SOR 1.r). Applicant attributes her financial problems to a short sale of a house in 2007 and medical expenses in 2008. She provided no details of the reasons why these two events caused her to incur delinquent debt. The total amount of the delinquent debt is \$67,703. Applicant admitted to all debts except the debts listed at SOR 1.l, 1.m, and 1.q. The amount of the debts she admitted is \$64,740.

Applicant told the security investigator that the medical debts were copayments for her medical care and the responsibility of her health insurance company, TRICARE. She has long-term health issues and is in constant discussions with TRICARE concerning payment of her medical expenses. (Item 5 at 3) In response to

interrogatories, Applicant stated that TRICARE will not make any further payments on the debts, and she would now work with the medical provider to pay the \$240 in medical delinquent debts. (Item 6 at 10) She presented no information to show she contacted the medical providers or made payments on the medical debts.

In response to questions from the security investigator, Applicant acknowledged the credit card debt at SOR 1.j. The debt started to become delinquent in 2007 when she sold her house at a short sale and her medical insurance company was not paying her medical bills. (Item 5 at 3) In response to interrogatories, Applicant noted she owed \$1,000 on this account. She did not believe the amount was correct. She thought the creditor would make a settlement offer. She did not present any information concerning any contact with the creditor, a settlement offer, or any payments on the debt. (Item 6)

In the interview with the security investigator, Applicant acknowledged the signature loan debt at SOR 1.k. She obtained the loan in 2004 to help pay medical and other expenses. The debt became delinquent starting in 2008, because of her other medical expenses. The creditor contacted her in January 2011 offering to settle the debt for about 50% of the amount owed. The creditor would accept monthly payments of \$250. In response to financial interrogatories, Applicant presented a letter from the collection attorney showing a payment made on the debt in July 2012. The debt payment is listed on her Personal Financial Statement as a monthly debt payment. In response to the FORM, Applicant presented documentation of continued payment of the debt. (Item 6 at 4, 10, and 12; Response to FORM, dated March 2, 2012, at Letter, dated February 18, 2013)

Applicant believes the telephone debt at SOR 1.l is from her previous telephone service. She told the security investigator that she was not aware of the debt or the amount due and would contact the telephone service. In her response to interrogatories, she stated that she was not sure of the name or location of the collection agency. She did not present any information to establish her attempts to contact the service provider or pay the debt. (Item 5 at 3)

Applicant told the security investigator that she was not aware of the debt at SOR 1.m. She believes it may be an outstanding medical debt. If the creditor contacts her, she will pay the debt. (Item 5 at 3) In response to interrogatories, Applicant stated she had not been contacted by the creditor. She was in the military living in the vicinity of the location of the medical service provider when the debt was incurred. The military medical system was responsible for her medical care. She does not believe she is responsible for the debt. She presented no information on attempts to resolve the debt. (Item 6 at 10)

Applicant told the security investigator that the original debt at SOR 1.n was for utility service. Applicant said she is not responsible for the debt because she sold the property where the service was provided in June 2006, and the utility company continued to bill her for the service. (Item 5 at 4) In response to interrogatories, Applicant stated she contacted the collection agent and was told they no longer have

the account. She contacted the utility company asking for her final bill which she has not yet received. She would pay the bill if she still owed the debt. (Item 6 at 10)

Applicant told the security investigator that she had ordered items from the mail order company listed as the creditor for the debt at SOR 1.o. She has not ordered from them since 2004. (Item 5 at 4) In response to interrogatories, Applicant stated she would contact the creditor and work with them on the debt. She did not present any additional information on her attempts to resolve this debt. (Item 6 at 10)

Applicant told the security investigator that she was not aware of the telephone debt at SOR 1.p. She thought the debt was paid when she moved in June 2006. The collection agency contacted her in December 2010 but she has not made any payments on the debt. (Item 5 at 4) In response to interrogatories, Applicant stated she has service with the provider at her present house. The service provider told her there was no balance due on the account. They were to conduct a further check. If the debt is owed, she will pay it. (Item 6 at 10)

Applicant acknowledged a state tax debt as listed at SOR 1.q when she was interviewed by a security investigator on March 17, 2011. When she answered the SOR, she denied the debt stating that it was paid. After Applicant sold a mobile home, she was not aware that the real estate company had not timely transferred the title to the property and she owed property tax to the state. Her tax returns were audited by the state because of the mistake resulting in additional taxes. Her wages were garnished starting in 2008. (Item 5 at 1-2; Item 7 at 3) In her response to the SOR, Applicant presented information to establish that the garnishment was completed in January 2011, and the tax debt paid in full. (Item 3)

In response to financial interrogatories, Applicant acknowledged a federal tax debt of approximately \$21,839 (SOR 1.r). She states that she has a payment plan with the Internal Revenue Service (IRS) for \$350 a month. She presented a notice from the IRS giving her credit for a \$200 payment on June 12, 2012, with a \$350 payment due on July 28, 2012. (Item 7 at 3) In response to the FORM, Applicant presented a payment history for the federal tax payment plan through March 2013. (Response to FORM, dated March 2, 2013)

In response to the FORM, Applicant states that she has paid her military star card debt in full. In the past ten years, she paid for her mobile home and three vehicles. She has had to pay more for her living expenses and to support her local church. She is trying to become a better person and pay her debts. (Response to FORM, dated March 2, 2013)

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 must be considered 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. 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, thereby raising 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) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect classified

information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant's delinquent debts listed in credit reports and admitted by Applicant, raises Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). The delinquent debts show a history of not meeting financial obligations and both an inability and unwillingness to satisfy debt.

I considered Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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); and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply.

Applicant retired from active duty and has been employed by a defense contractor for approximately 14 years. She states that she incurred debt as a result of a short sale of her house and medical expenses not covered by medical insurance. She did not present any information to establish the details of why she could not pay the debts. She has significant monthly pay and a large net remainder. She presented no information on her efforts to contact creditors to learn the status of the debts. She has sufficient income to pay her past financial obligations. With evidence of delinquent debt and no documentation to support responsible management of her finances, it is obvious that her financial problems are not under control. She has not presented information to show she acted responsibly towards her finances.

I considered FC MC ¶ 20(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). Applicant presented no information to indicate she sought or received credit counseling. There is no indication her financial problems are being resolved or under control.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and

adherence to duty or obligation. A promise to pay debts in the future is not evidence of a good-faith intention to resolve debts. Applicant has to show a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. All that is required is a plan to resolve financial problems coupled with significant action to implement that plan.

Applicant has shown a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts on three of her debts. She paid a state tax lien, is paying her past due federal taxes according to a payment plan, and is paying another debt according to a payment plan. However, Applicant failed to establish a meaningful track record to all other debts. Applicant did not present sufficient evidence to show payment of the other debts or even reasonable attempt to contact creditors. She has sufficient income to pay her debts. Applicant's lack of documented action to pay her past debts is significant and disqualifying. Based on the acknowledged debts and the failure to establish payment of the debts, Applicant has not acted responsibly. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 considered Applicant's over 21 years of active duty service in the Marine Corps and her honorable discharge. I considered that she successfully had access to classified information for many years. Applicant has not established a meaningful track record of paying most of her delinquent debt. She is paying some debts but a significant number are being ignored. She has not provided sufficient credible documentary information to show she acted reasonably and responsibly to address her delinquent debts and resolve her financial

problems. She did not provide a credible plan to resolve and pay all of her delinquent debts. Applicant has not demonstrated responsible management of her finances or a consistent record of actions to resolve financial issues. The lack of responsible management of financial obligations indicates she may not be concerned or act responsibly in regard to handling of classified information. Overall, the record evidence leaves me with questions and doubts about Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation. Eligibility for access to classified information is denied.

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.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.p:	Against Applicant
Subparagraphs 1.q – 1.r:	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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge