



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-14461

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

12/03/2013

Decision

HOWE, Philip S., Administrative Judge:

On September 12, 2011, Applicant submitted her electronic version of the Security Clearance Application (SF 86) (e-QIP). On April 9, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing. Applicant requested her case be decided on the written record in lieu of a hearing.

On August 28, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on September 6, 2013. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on September 13, 2013. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on October 13, 2013. Department Counsel had no objection to the material submitted. I received the case assignment on October 28, 2013. Based upon a review of the complete pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant denied the allegations in Subparagraphs 1.e, 1.g to 1.j, and 1.n to 1.p. She admitted the allegations in Subparagraphs 1.a to 1.d, 1.f, and 1.k to 1.m. (Items 1-3)

Applicant owes 16 delinquent debts totaling \$32,891. Those debts include four tax liens owed to her home state, two telephone bills, five credit cards, one medical debt, one cable television debt, one mortgage debt, a country club membership debt, and one judgment. She works as a technical writer for a defense contractor. Her husband is the dean of students at a college near their home earning \$6,250 monthly. Applicant has two daughters and has been married since 1992. (Items 1-9)

Applicant owes state tax for certain years, resulting in her home state filing tax liens against her and her property. She did not file state income tax forms from 2005 to 2009. She claimed her husband and she had mixed communication about who was to file the returns. Applicant's Answer asserts she filed these tax returns and refunds or small payments are required. The four liens total \$21,223 (Subparagraphs 1.a through 1.d). Her Response included four lien satisfaction documents dated in August and September 2013, of which only two liens in Subparagraphs 1.b (\$3,316) and 1.c (\$5,264) can be connected by the case numbers to the four tax debts listed in the SOR. (Items 1-9, Response)

Applicant's Response states she made a first payment toward a debt resolution plan in a Chapter 13 bankruptcy. However, she does not disclose what the payment amount is nor include copies of any bankruptcy petition or court orders. (Response)

Applicant owed \$643 on a cell telephone debt (Subparagraph 1.e). Her Answer states she denies the debt. She claimed to have a payment arrangement and paid \$185 on May 2, 2013, on the debt. Applicant does not show any additional payments. The debt appears on her January 10, 2013 credit report but not on her August 22, 2013

report. The debt was incurred in 2009 and listed in 2012. The debt appears to be resolved. (Items 1-9, Response)

Applicant owes \$487 on a debt to a cable television provider (Subparagraph 1.f). She admits this debt. Applicant's Answer states a payment arrangement is made and the first payment was made in May 2013. She does not submit any documents to demonstrate the payments were made as agreed upon. This debt is not resolved. (Items 1-9)

Applicant owes \$250 on a medical account now serviced by a debt collector (Subparagraph 1.g). Applicant denies she owes this money and her Answer claims it is being disputed, but there is no documentary evidence of a dispute letter to the credit reporting agencies. She told the government investigator in September 2011 that she was unaware of any details of this account. The debt was opened in May 2011. This debt is unresolved. (Items 4-6)

Applicant owed \$940 on a credit card debt (Subparagraph 1.h). She denied this debt. Then, she stated she made a \$386.12 payment in May 2013. Her checking account statement for May 2013 shows that amount was debited from her account. She did not submit any proof the second payment of the same amount was made. The August 2013 credit report shows this debt is a "paid collection." The debt is resolved. (Items 1-9)

Applicant owed \$683 to a debt collector (Subparagraph 1.i). She denied this debt. She claims a payment arrangement is in place and submitted proof of a \$92.56 payment in March 2013. She did not submit any other documents showing monthly payments were made. The 2013 credit reports show the debt remains unpaid with the current balance in August 2013 of \$603. This debt is unresolved. (Items 1-9)

Applicant owed \$1,505 to a debt collector (Subparagraph 1.j). She denied this debt. Applicant claims she has a payment arrangement for \$71.66. She attached to her Answer a copy of an April 2013 payment but no other proof of regular and current payments were included. The 2013 credit reports show Applicant disputes the account but the current balance is \$1,405. This debt is unresolved. (Items 1-9)

Applicant owes a telephone company \$534 (Subparagraph 1.k). She admitted this debt. She did not submit any proof of payments on an installment agreement she claimed was to start in June 2013. The 2013 credit reports show this debt is unresolved. (Items 1-9)

Applicant owes \$31,474 on a mortgage (Subparagraph 1.l). She admitted this debt. Her Answer states she and her husband were assigned a counselor by the mortgage holder and were negotiating a payment plan to start in June 2013. Applicant did not submit any proof of such an arrangement. The two 2013 credit reports show this debt as unpaid. This debt is unresolved. (Items 1-9)

Applicant owes a collection agency \$1,016 for a debt originating from a country club she joined (Subparagraph 1.m). The debt originated in 2009. She admits this debt. Applicant claims a payment arrangement for \$100 monthly is in operation but did not submit any documents verifying her assertions. The 2011 credit report shows the debt unpaid. The 2013 credit reports do not list the debt. The debt is unresolved because there is no proof of payment. (Items 1-9)

Applicant owes \$87 to a debt collector for a music service account (Subparagraph 1.n). Applicant claims the debt is paid. She denies the debt. It appears on the September 2011 credit report but not the 2013 credit reports. Without documents showing actual payment, the debt remains unpaid and unresolved. (Items 1-9)

Applicant owed \$632 on an account with a debt collector (Subparagraph 1.o). Applicant denies this debt. She claims the debt is the same as that specified in Subparagraph 1.h. The January 2013 credit report shows the debt was purchased by another collector, the agency listed in the earlier allegation. This debt is resolved. (Items 1-9)

Applicant owes \$2,660 on a judgment filed in 2009 (Subparagraph 1.p). Applicant denies this debt. Applicant claims payments are being made on this account in the amount of \$300. She attached to her Answer a copy of a check written in March 2013. No other documents showing regular and current payments were submitted. The 2013 credit reports show an outstanding balance of \$603 to this creditor. This debt is unresolved. (Items 1-9)

Applicant claims she was unemployed from December 2003 to February 2004, February 2007 to May 2007, and March 2008 to October 2008. Applicant received unemployment compensation during those periods and her husband's income. She also asserts her husband, who is the dean of students at a college, suffered pay reductions at some unspecified time. He currently earns about \$75,000 annually. Applicant's income is unspecified in any of her documents. (Items 3, 4, Response)

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 are useful 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, the administrative judge applies the guidelines 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 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.

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 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 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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of same.

From 2009, at least, to the present, Applicant accumulated 16 delinquent debts, totaling \$32,891, many of which remain unpaid or unresolved. AG ¶ 19(a) and (c) apply.

Applicant also owes tax liens for four years in her home state for its income tax. She failed to file four years of state income tax forms as required by law. The years of non-filing were 2005 to 2009. However, the SOR only alleged she owed the tax liens, not that she failed to file the income tax returns. Applicant filed these tax returns and the state government is adjusting her liabilities. At least two liens have been released, though Applicant submitted four documents. Two documents' case numbers do not coincide with the credit reports in the file. Nonetheless, AG ¶ 19 (g) does not apply because the failure to file was not alleged in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three mitigating condition might have partial applicability.

(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;

(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.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on her ability to repay her debts. In the past five years, Applicant has been unemployed 10 months. Applicant has been employed for the past four years. Her husband is employed and his income could have been used to pay these debts. Applicant did not act responsibly under the circumstances, especially joining a country club in 2009, while failing to pay her debts that included her mortgage. She failed to meet her burden of proof on that issue.

Applicant paid four debts, those listed in Subparagraphs 1.b, 1.c, 1.e, and 1.h (the same as 1.o). She has 11 delinquent debts unpaid. Furthermore, concerning several debts she claimed were paid or on which she made one payment from March to June 2013, she did not submit additional documents to demonstrate she made regular payments. Applicant failed to meet her burden of proof on AG ¶ 20 (d).

Lastly, Applicant disputed several debts. She did not submit any documentary evidence of her disputes and the basis for them. Applicant failed to prove AG ¶ 20 (e) applied because she did not submit sufficient evidence of a legitimate basis for the disputes.

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 facts and circumstances surrounding this case. Applicant was an adult when she incurred the debts. She has taken little action to resolve her delinquent debts. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of action continues to this day, and is obviously voluntary. Her inaction will likely continue based on her past performance. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make payments on many of her delinquent debts during the past five years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

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, 1.d, 1.f, 1.g, 1.i to 1.n, 1.p:	Against Applicant
Subparagraphs 1.b, 1.c, 1.e, 1.h, 1.o:	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.

PHILIP S. HOWE
Administrative Judge