



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 12-00828

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

10/28/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On June 20, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising 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 (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2013. A notice of hearing was issued on September 3, 2013, scheduling the hearing for September 27, 2013. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-D, which were admitted without objection. I kept the record open for additional submissions, which were received. A packet, marked as AX E, was accepted into the record. The transcript (Tr.) was received on October 7, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted nine of the factual allegations 1.a-1.f,1.i-1.k, and denied 1.g, 1.h, 1.l and 1.m under Guideline F (Financial Considerations), with explanations.

Applicant is a 52-year-old office management specialist employed by a defense contractor. She graduated from college in 1983. She has never served in the military. There is no evidence of criminal arrests or convictions. There is no evidence of use of illegal drugs or alcohol abuse. Applicant has held a security clearance since 2002. (Tr.78) She has been with her current employer since September 2010, but she has been employed as defense contractor for more than 20 years.

Applicant is a single mother who provides financial support to her two children, her grandchildren, and her elderly parents. (Tr. 33) Her husband, who has been incarcerated since 1992, also receives support from Applicant. (Tr. 8)

The SOR alleges 13 delinquent debts. The debts include four tax liens; collection accounts; a vehicle repossession; and a judgment. The debts total approximately \$26,000. The credit reports confirm the debts. (GX 3-4)

Applicant hired the Lexington Law Firm in April 2013 to help clear her credit report of her delinquent debts. (GX 2) She pays them a monthly fee of \$100. She had not obtained a credit report and was not aware of some of the debts noted in the SOR. In May 2013, the firm sent inquiry letters to some of the creditors to challenge the debts. She has recently sent letters inquiring about the debts.

Applicant provided documentation that the four tax liens (SOR 1.a-1.d) have been satisfied. (AX C) Applicant explained that when she files her taxes each year, she owes money to the state of her residence and is put on a payment plan and the following year a lien is attached. (Tr. 31) The liens¹ date back to 1998 and have been satisfied in the past three years. (AX D)

Applicant settled SOR debt 1.i owed to a telecommunications company in the amount of \$421. (Tr. 48) She spoke to a representative in July 2013 to make payment arrangements. The submitted document reflects that she paid \$242. The balance is zero. (AX C)

The collection account (SOR 1.e) for \$7,152 relates to unpaid rent for two months. The firm that Applicant employed is working to dispute the amount of the debt. Applicant believes it is for two months rent and should not be such a large amount. After the hearing (September 30, 2013), she sent a certified letter asking for an "estimated bill of charges." Applicant asked for a payment arrangement plan. (AX E)

¹The SOR was amended at the hearing to reflect the correct state.

Two medical accounts are alleged for a total of approximately \$300. (SOR 1.f and 1.g) Applicant was not aware of any unpaid medical debts. She is investigating the debts. (Tr. 24) One debt has been removed from her credit report, and she believes that she is no longer responsible for the account. (Tr. 42) Before October 2013, Applicant had not investigated the medical debts. (AX E)

The 2007 judgment in SOR 1.h for \$1,303 is unpaid. This judgment is for the apartment rent that was unpaid in SOR 1.e. Applicant explained that she checked with the court house and there is no record of a judgment. (Tr. 44) The issue is not resolved.

The debt alleged in SOR 1.j for \$507 for a wireless account is unpaid. Applicant telephoned the company to settle the debt. Applicant agreed to pay two payments of \$253 to settle the debt. (AX C) The account reflects a zero balance.

Applicant is indebted for a collection account in the amount of \$5,009. The debt (SOR 1.k) is the result of a 2007 auto repossession. She admits the debt but disputes the amount. (Tr. 55) She noted in her 2011 security clearance application that she would pay the debt in monthly installments. (GX 1) She was offered a settlement for \$2,504, but she was not able to pay the total amount. In June 2011, Applicant began a payment plan and has made only one \$50 payment. She also notes that the collection account no longer appears on her credit report (charged-off account) with a zero balance. The firm that she hired has sent a letter to the bank to have the debt removed from her credit report as "satisfied." (Tr. 56)

Applicant denied the debt in SOR 1.l for a \$400 cash loan from 2007, because she contacted the group in July 2013 and was told that nothing was recorded. The debt does not appear on her credit report. (Tr. 58) She admits that a few years ago she did receive a cash loan from the company, but she believes she repaid the amount. Applicant has no documentation to support her claim. She believes it should be removed from her credit report due to the age of the debt.

The last collection account listed in the SOR 1.m is in the amount of \$250. Applicant claims that she does not owe anything because the amount is for parking tickets that she paid several years ago, but she does not have any receipts. (Tr. 60) Applicant relies on the fact that the debt has been removed from her credit report to support her belief that she does not have an obligation.

Applicant's net monthly income is approximately \$4,855. Her net monthly remainder is about \$2,646. Applicant also pays \$100 a month for a 2011 federal tax debt (\$1,921). (Tr. 64) She has a small savings account. She also pays \$169 a month for a \$1,600 state tax lien. (Tr. 22)

Applicant was candid in her explanation that she was interviewed by the OPM investigator in 2011 and put on notice of the financial issues. She did not hear anything after the investigation until 2013, and she assumed that there was no problem. She now understands the importance of paying bills, and the impact that has on her security clearance. She realizes that she was negligent in addressing the financial issues. (Tr.

49) She has no desire to file for bankruptcy. She believes the financial issues began in 2006. She has not received any financial counseling or debt consolidation services. She believes if an account has been charged-off, she has no obligation to pay the account. Applicant took no action regarding her debts until she received notice in 2013 that her security clearance would be negatively impacted. She made various promises to the OPM investigator in 2011 regarding her debts, but took no action. Even after the 2013 SOR, Applicant hired a firm to dispute the debts and have them removed from her credit report, rather than try to pay some of the smaller ones.

Applicant submitted nine letters of recommendation, to include one from an Ambassador. Each letter describes Applicant as a person of honor and character. Applicant is committed to her work and demonstrates great compassion and temperance in all matters. Applicant is described as diligent and professional. She has been attentive in her duty to protect classified information. Applicant displays a commitment to community and to country. (AX B)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to 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, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits that she had delinquent debts, her vehicle was repossessed, and that she had four tax liens. Her history of indebtedness is documented in the record. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶¶ 19(a), 19(c), and 19(g).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant has been gainfully employed since 1983. She is a single parent providing for her children, grandchildren, and her elderly parents. Applicant was put on notice that she had financial issues in 2011. She knew that she owed state taxes each year from 1998. Applicant claims that she was not aware of many of the debts until the 2011 investigation. She did not do anything until she heard from the government in 2013 about her security clearance. She has paid two small bills. She hired a firm in 2013 to try to remove debt from her credit reports, not necessarily pay them. She has not acted responsibly. She has recently written letters to creditors to dispute the debts. She made one \$50 payment on an account in 2011. She has a savings account. Applicant has not received financial counseling, nor has she obtained the services of a debt consolidation planner. She did not maintain contact with her creditors from 2011 through 2013. She has not produced sufficient information to meet her burden. There is no documented evidence of progress resolving her SOR debts, except for the four tax liens. She has not mitigated the security concerns under the financial guideline. None of the mitigating conditions apply to all debts.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 52-year-old employee of a defense contractor who has held a security clearance since 2002. She has been employed by defense contractors for a number of years. She obtained her undergraduate degree and has been gainfully employed. Applicant has received many favorable recommendations. Applicant provides support for her children, grandchildren, and elderly parents. There is no evidence of criminal conduct or abuse of alcohol or drugs. She contributes to her agency. There is no evidence of disloyalty or that she would intentionally violate national security.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. She had four state tax liens which she has only recently satisfied. She acknowledges that she failed to pay her taxes in full for several years. Applicant admits that she also owes federal taxes. She has collection accounts that she has been aware of since the 2011 OPM interview, but has only recently hired a company to dispute them or help get them off her credit report. She paid two small debts. She made one \$50 payment in 2011 on a payment plan to another creditor, but has not made any other payments. She could have been more active resolving and documenting resolution of her delinquent SOR debts. She still does not have a plan to pay her debts. She relies on credit report removal of the debt. Her failure to establish her financial responsibility shows lack of judgment and raises unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 15. More documented financial progress is necessary to fully mitigate security concerns. Financial considerations are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information at this time.

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.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant
Subparagraphs 1.i-1.j:	For Applicant
Subparagraphs 1.k-1.m:	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 continue Applicant's security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge