



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



In the matter of:)
)
) ISCR Case No. 12-03393
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

09/26/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Despite the negative entries on her credit report, Applicant provided evidence that she settled the debts alleged in the SOR well before applying for a security clearance in October 2011. Clearance is granted.

Statement of the Case

On March 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing.² At the hearing convened on August 20, 2014, I admitted Government's Exhibits (GE) 1 through 7, as well as Applicant's Exhibits (AE) A and B, without objection. I received the transcript (Tr.) on September 2, 2014.

Findings of Fact

Applicant, 34, works for a federal contractor as a security-control supervisor at an international airport. Hired in 2002 as a screener, Applicant was promoted to her current position in 2007. Applicant completed a security clearance application, her first, in October 2011. The subsequent background investigation revealed that Applicant owed five delinquent credit card accounts to three creditors, totaling \$49,500. These accounts were ultimately alleged in the SOR.³

In 2005, Applicant and her brother purchased two homes together. Each property was purchased using adjustable rate mortgage (ARM) loans. Each sibling maintained their respective loans until 2008 when both loans adjusted, doubling the payment on each home. Applicant and her brother tried to obtain modifications on the loans. During the four months they waited for approval, Applicant exhausted her financial resources to keep the loans current. She depleted her savings and used credit cards. By the time Applicant and her brother received approval for the loan modifications, the mortgage lender had foreclosed on and sold both homes.⁴

After the losing the homes, Applicant closed her credit card accounts and tried to resolve the debts, but the interest and fees began increasing without explanation. Soon, Applicant could not afford to pay the accounts and they became delinquent. For several months, Applicant tried to work with the credit card companies directly to renegotiate the terms and resolve her accounts. In 2010, Applicant retained an attorney to help her resolve her credit card debt. At her attorney's direction, Applicant wrote each creditor to dispute the debt, in particular the interest rate and fees applied to each account. None of the creditors responded to Applicant's dispute letters. Applicant then sent each creditor a settlement offer along with a letter explaining that she would take acceptance of the payment as satisfaction of the debts. Two of the creditors cashed Applicant's checks for ¶¶ 1.a and 1.b. in October 2010. The third creditor accepted payments on ¶¶ 1.c. and 1.d in April 2011. Six months after each creditor accepted Applicant's payments, her attorney sent a letter to each creditor informing them that each account was considered resolved by an accord and satisfaction under applicable state law and requested that each creditor report the debts as settled to the credit reporting agencies.

² To assist in her preparation for the hearing, Applicant received correspondence from Department Counsel and the Chief Administrative Judge. These letters are appended to the record as Appellate Exhibits (AP) I and II.

³ Tr. 17, 45-46; GE 1.

⁴ Tr. 18-19, 30-35, 40, 48-53, 55-58.

Although none of the creditors have provided updates to the credit reporting agencies, none have made any further collection attempts against Applicant.⁵

Applicant contacted the creditor to establish the validity of the debt alleged in ¶ 1.e. The creditor provided Applicant a document listing all of the accounts she had with them, including those sold to third parties for collections. Based on the list, the creditor was unable to validate the account, which appears only the November 2011 credit report, the earliest of the five credit reports in the record.⁶

Applicant has no other delinquent debt or any other history of financial problems. Applicant is now married, with one child and expecting a second. She and her husband own their home. She is current on her recurring bills and has no other delinquent accounts. For the first time since closing her credit card accounts in 2008, Applicant opened a credit card account in an effort to rehabilitate her credit score.⁷

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 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.

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,

⁵ Tr. 19-25; 41-45, 54; Answer.

⁶ Tr. 25-26; GE 3; AE A.

⁷ Tr. 37-40; GE 7.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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.

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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁸ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. The SOR alleges that Applicant is indebted to three creditors for approximately \$49,500. Although Applicant denies the allegations, each debt alleged in the SOR is substantiated by the credit reports in the record.⁹ Applicant’s failure to pay the debts demonstrates an inability to pay her debts and a history, albeit a brief one, of not doing so.¹⁰

However, the record contains sufficient evidence to mitigate the financial concern. Applicant does not have a history of financial problems. She incurred debt for a limited time and purpose under circumstances unlikely to recur and that do not cast doubt on her current security worthiness.¹¹ Although Applicant’s financial problems were not entirely beyond her control (she was aware that the homes were purchased with ARM loans and were scheduled to adjust in three years) she did act responsibly to resolve her financial issues.¹² Applicant closed the accounts after the homes were sold.

⁸ AG ¶ 18.

⁹ GE 3 – 7.

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ AG ¶ 20(a).

¹² AG ¶ 20(b).

When she realized that she was unable to resolve her credit card debt on her own, she retained an attorney to act on her behalf. With the attorney's help, Applicant settled four of the five accounts (¶¶ 1.a-1.d). Applicant's actions indicate a good-faith effort to resolve her delinquent debts.¹³ Because Applicant cannot control the information her creditors report to the credit agencies, her efforts mitigate the security concern even though the four accounts continue to report as negative entries on her credit reports. She also provided sufficient evidence of her legitimate dispute of the account alleged in ¶ 1.e.¹⁴

Whole-Person Concept

I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant took reasonable steps to address her delinquent debts as soon as practicable after losing two homes to foreclosure. She sought and relied upon professional help to resolve her debts well before she applied for a security clearance in October 2011. Applicant's actions reflect the contentiousness required of those seeking access to classified information.

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, Financial Considerations:	For Applicant
Subparagraphs 1.a – 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge

¹³ AG ¶ 20(d).

¹⁴ AG ¶ 20(e).