



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-04004
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

04/28/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

History of the Case

On September 24, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 22, 2013, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 5, 2014, and responded to the FORM within the time permitted. In her response, she claimed payments on several of the listed debts and

progress on most of the remaining debts. I admitted the submission with eight attachments as Item 12. The case was assigned to me on April 9, 2014.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 21 delinquent debts. These debts exceed \$16,500. (Item 1)

In her response to the SOR (Item 4), Applicant admitted the allegations covered by subparagraphs 1.a-1.n and 1.p-1.u, and denied the allegations covered by subparagraph 1.o of Guideline F. She offered explanations for most of the listed debts. She claimed she was making payments to a number of the listed creditors (i.e., creditors 1.b, 1.m, 1.n, and 1.s-1.u) She claimed she assigned one of the listed accounts (creditor 1.o) to a third-party who "is working to pay off the debt." She claimed to have scheduled monthly payments with two of the listed creditors (i.e., creditors 1.j and 1.k) With several of the listed creditors, she claimed she is still attempting to contact them to make scheduled payments (i.e., creditors 1.e-1.i, 1.l, 1.p, and 1.q).

Findings of Fact

Applicant is a 39-year-old technical support employee of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as a relevant and material finding. Additional findings follow.

Background

Applicant married in February 1993 and divorced her husband in August 2001. She has two children from this marriage, ages 19 and 21. (Item 6)

Applicant enlisted in the Marine Corps February 1992 and served four years in the inactive reserves before receiving her honorable discharge in February 1996. (Item 5) She earned credits in computer technology from a computer learning center in 1996. (Item 6)

Applicant's finances

Between 2005 and 2013, Applicant accumulated a number of delinquent debts, mostly in her name. These debts involve past due rental payments, credit cards, medical accounts, telephone accounts, and other assorted debts. Applicant disputes a number of them, claiming she does not recognize them as her debts. (Items 4 and 6) She attributes most of them to her ex-husband, her former boyfriend, and her sons.

Applicant's credit reports reveal that most of the reported delinquent accounts covered in the SOR were opened after 2006 in her name (individually). Her reported debts are comprised of the following: Creditor 1.a (\$3,111); creditor 1.b (\$852); creditor 1.c (\$2,012); creditor 1.d (\$173); creditor 1.e (\$358); creditor 1.f (\$774); creditor 1.g (\$837); creditor 1.h (\$442); creditor 1.i (\$561); creditor 1.j (\$57); creditor 1.k (\$344); creditor 1.l (\$855); creditor 1.m (\$117); creditor 1.n (\$121); creditor 1.o (\$3,906);

creditor 1.p (\$412); creditor 1.q (\$781); creditor 1.r (\$412); creditor 1.s (\$152); creditor 1.t (\$102); and creditor 1.u (\$156). Together, her listed delinquent debts total more than \$16,500. (Items 2, 4, and 6-12)

Among the debts Applicant continues to dispute are her debts with creditor 1.a over reported back rent and with creditor 1.o over a reported deficiency balance on a repossessed SUV vehicle. She claims she gave her creditor 1.a landlord two months notice on her vacating her apartment in 2011. (Items 4 and 6) The landlord denied ever receiving a notice from Applicant, and remains in dispute with Applicant over whether she owes any back rent to creditor 1.a. Other listed accounts disclosed to her in her interview with an agent from the Office of Personnel Management (OPM) in January 2012 were previously unknown to Applicant. (Items 4 and 6) When confronted with the debts listed in Applicant's credit reports, Applicant committed to addressing the debts and paying off those debts she could identify as her own.

In 2004, Applicant and her former boyfriend (2002-2007) co-signed for the purchase of an SUV for approximately \$25,551 with creditor 1.o. (Items 9 and 10) Their monthly car payments were \$650. By 2005, Applicant and her boyfriend could no longer make their car payments, and the vehicle was repossessed. (Items 4 and 6) They separated in 2007; her boyfriend assumed possession and payment responsibility; and Applicant never received any demand notices from the creditor. (Items 4 and 6) Believing that the vehicle was essentially her former boyfriend's vehicle and his payment responsibility, she never inquired of her boyfriend as to the vehicle's status, or made any attempts herself to resolve the deficiency issue. Applicant continues to dispute a reported deficiency balance with creditor 1.o.

Since responding to DOHA interrogatories in June 2013, Applicant has contacted a number of her debts, including creditors 1.a-1.d, 1.j-1.k, 1.m-1.n, and 1.s-1.u. (Items 3 and 12) Her efforts have yielded pay-offs of her 1.d, 1.j, 1.k, 1.m, 1.n, 1.s, and 1.t debts. These payoffs exceed \$1,000. She documented payment plans in place with creditors 1.b (\$50 a month) and 1.u (\$25 a month) And she identified one listed debt (creditor 1.r) that is a duplicate of another listed debt (creditor 1.h). (Item 12) To date, though, she has not documented any payoffs or payment plans in place with any of the remaining creditors: some identified (i.e., creditors 1.a, 1.c, 1.e, 1.f, 1.l, 1.p, and 1.q) and some not (i.e., creditors 1.g, 1.h, and 1.l).

Applicant claims to have reached out to creditors 1.f-1.i and 1.p-1.q for more information on the debts, and for payment instructions on the debts that are validated. Pending input from these creditors, she has initiated no payment steps. And while she claims to be making monthly payments to creditors 1.a and 1.c in her post-FORM submission, she provided no payment documentation. So, as the record now stands, Applicant's listed debts with her remaining creditors remain unsatisfied and unresolved. Together, these unresolved debts exceed \$14,000 (inclusive of the deficiency debt covered by creditor 1.o).

Applicant enrolled in credit counseling in March 2014, and with the help of her creditor counselors, she hopes to be able to identify the remaining listed debts in the SOR. (Item 12) To date, she has been unable to make any additional documented

progress in identifying the remaining creditors listed in the SOR. Without any additional evidence of disputed debts or payment initiatives with her remaining creditors she is able to identify, her payment initiatives with these disputed and unidentified creditors cannot be properly assessed.

In her most recent personal earnings statement, Applicant reported net monthly income of \$5,200, monthly expenses of \$2,700, monthly debts of \$350, and a net monthly remainder of \$2,350. (Item 6) Despite a positive net monthly remainder, Applicant has made only minimal progress with her listed debts. While claiming to have a repayment agreement in place with creditor 1.a, she provided no documentation of the \$292 monthly payments she committed to making to the creditor.

Endorsements

Applicant provided no endorsements or performance evaluations on her behalf. Nor did she provide any proof of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes 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, ¶ 18)

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's listed delinquent debts and her limited display of payment initiatives over an eight-year period dating to 2005. Applicant's recurrent problems with managing her finances over a considerable period of time reflect lapses of judgment in working with her creditors.

Between 2005 and 2013, Applicant encountered recurrent problems in paying the debts she owned (mostly individually) and working with her creditors to identify reported debts once she became aware of them. Most of the reported debt delinquencies she attributed to her ex-husband, her former boyfriend, and her sons. Several of the listed debts she has since acknowledged as her own and addressed them with payoffs and payment plans. But many of her reported debts remain unresolved and without the necessary documentation to identify them or establish direct payment plans with the individual creditors.

With a sizeable net monthly remainder, Applicant could be expected to have achieved more progress in identifying and paying off the debts covered in her credit reports. It is less than clear why she has not been able to make more payment progress with her listed debts once they were made known to her in her 2012 OPM interview. Applicant's actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), "inability or unwillingness to satisfy debts;" and DC ¶ 19(c) "a history of not meeting financial obligations."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are explicit in cases involving debt delinquencies.

While potentially extenuating, Applicant's accumulation debts associated with her ex-husband, former boyfriend, and sons are not sufficiently developed to definitively affix sole payment responsibility with any of them. Most of the listed debts were reported individual accounts opened by Applicant after 2007, and well after she split with her ex-husband and former boyfriend. As a result, neither MC ¶ 20(a), "the behavior happened a long time 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," nor MC ¶ 20(b), "the conditions that resulted in the behavior 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," have any more than partial application to Applicant's situation.

Applicant's finances have been marked by recurrent periods of instability for many years and show insufficient signs of stabilizing in the foreseeable future. While

she has addressed some of her smaller debts, she has made no cognizable progress in paying off her larger ones.

Full mitigation is difficult to establish with Applicant's history of minimal follow-through with payment initiatives with her available income sources. Her financial history reveals little attention to exploring payment initiatives before the issuance of the SOR. While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). While Applicant's addressing of her smaller debts this past year is encouraging, her efforts to date do not make much headway with her larger debts. More is needed of Applicant with the monthly income sources she currently has available to her.

While prospects are somewhat promising for resolutions of some of Applicant's remaining debts, it is by no means certain. Applicant's attempts to resolve her debts individually with her creditors merit partial application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." She may benefit, too, from the recent counseling program she is pursuing and take advantage of 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." But for lack of any strong track record of payment initiatives, these mitigating conditions warrant only partial application to her situation. Applicant's repayment efforts to date do not meet minimum mitigation criteria and are not enough to mitigate security concerns over her finances.

From a whole-person standpoint, the evidence reveals recurrent lapses of judgment associated with her accumulation of delinquent debts over the past seven years since separating from her ex-husband and former boyfriend. Her repayment efforts over the past year, while encouraging, are not enough to demonstrate a strong track record of debt repayment.

Without any evidence of work performance or community and civic contributions to weigh and consider, there is little evidence in the record by which to make a whole-person assessment of Applicant's accomplishments in her business and personal life. Overall, Applicant's efforts to date are insufficient to meet mitigation requirements imposed by the AGs governing her finances.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a, 1.c, 1.e-1.i, 1.l, and
1.o-1.q:

Against Applicant

Subparas. 1.b, 1.d, 1.j-1.k, 1.m-1.n,
and 1.r-1.u:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

