



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



In the matter of:)	
)	
)	ISCR Case No. 12-04249
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On May 30, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing 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; Department of Defense (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 review based on the written record in lieu of a hearing. The case was assigned to me on December 1, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated September 8, 2015.¹ Applicant received the FORM on September 24, 2015. Applicant submitted a response to the FORM, which was marked as AX A, and entered into the record without

¹The Government submitted eleven items for the record.

objection. Based on a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the SOR allegations 1.a through 1.i under Guideline F. She also provided explanations.

Applicant is 53 years old. She is married and has one son. She obtained her undergraduate degree in 1997 and her master's in 2000. She has been employed with her current employer since 2014. She completed an application for a security clearance in October 2011. (Item 5) She has held a security clearance since 1987.

Financial

The SOR alleges two bankruptcy filings and seven delinquent debts that amount to \$152,000. (Item 1)

Applicant does not dispute that in 1997 she and her husband filed for Chapter 7 bankruptcy and that the bankruptcy was discharged. (SOR 1.a) She stated that she filed due to advice given to her by her attorney and tax preparer. Her husband is a disabled Navy veteran who had numerous medical facility and treatment bills. As her husband could not work, they had less money to pay for the increasing medical bills. (Item 4) She noted that at the time she was working in a "cleared environment" and her FSO was aware of the financial issue.

Applicant admits that in January 2012, she filed for Chapter 13 bankruptcy, which was dismissed in April 2014. (SOR 1.b) She explained that her husband was denied SSI disability benefits twice. In the preceding years he had been hospitalized four times. She noted that he did receive disability in 2010 which helped pay some bills. However, she explained that by 2012 she was again overwhelmed with making all her payments on time. She stated that she received credit counseling from her bank. Again, her attorney advised the filing of bankruptcy. She filed a Chapter 13 because she wanted to pay her creditors. The reason the Chapter 13 was dismissed was due to unemployment she experienced for the second time in 22 months. She received unemployment benefits but her income was reduced from \$6,800 a month to \$2,500 a month. With assistance from relatives she continued to pay on the bankruptcy plan at \$692 a month. (Item 7) Applicant noted that her FSO has been fully informed of the Chapter 13 filing.

As to SOR 1.c, Applicant admitted that she borrowed money to complete her degree. She states that she will continue to pay the money she owes. She noted that some tax refunds have gone directly to the student loan holder. Now that she is fully employed she can pay a greater amount. She supplemented her answer in a response to the FORM. She stated that the credit reports do not reflect accurate balances for the student loans. The SOR alleged a defaulted student loan account that has been assigned to the government in the approximate amount of \$139,133.

As to the remaining delinquent debts in the SOR 1.d through 1.i, Applicant did not give specific reasons for the debts other than the mounting medical bills and prescriptions for her husband's health. She reiterated that since her full-time employment in 2014, she will continue to pay her debts.

Applicant submitted a credit report dated October 14, 2015, and believes that according to that report, she has about \$3,958 in delinquent debts. She disputed the student loan amount. Her report does reflect accounts that are current, including her mortgage. (AX A)

Applicant's response to the FORM noted when she was unemployed in 2012 and 2013. She vehemently denied that she is a threat to security and is unable to protect classified information. She stated that she continues to investigate ways to eliminate debt. Since 2012, she has held no credit cards. She stated that she has no tax liens and has remained current with her bank accounts.

The record is devoid of any documentary evidence of payments made after the dismissal of the Chapter 13 bankruptcy. She has not presented any payment plan for the debts listed on the SOR. She states that she will pay her debts and is a responsible person. However, without documentation to substantiate her efforts to resolve her delinquent debts, she has not shown sufficient mitigation in this case.

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.

The U.S. 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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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.*

Applicant filed for Chapter 7 bankruptcy in 1997, which is a long time ago. However, since then it appears that she has continued to have financial difficulties, and she filed for Chapter 13 in 2012. Due to unemployment, she had to stop making payments to the trustee, and the bankruptcy petition was dismissed. She still has significant debts that have not been resolved. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulty make it difficult to conclude that it occurred "so long ago." Applicant has not shown that she has paid or resolved any debts after the Chapter 13 dismissal in 2014. She still has unresolved debts. Consequently, 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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 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 under the circumstances) has partial application. Applicant's unemployment and her husband's illness are certainly circumstance beyond her control. She tried to resolve her debts in a legal manner through Chapter 13 bankruptcy. However, she has not shown that since then she has addressed any debts or that she has the ability to do so financially. She has worked in a full-time position since 2014. She did not provide any information that would allow this mitigating condition to apply. She did not produce any documentation that she acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant attempted to use Chapter 13 to resolve her debts in a legal manner. However, she could not continue due to another period of unemployment. There is no evidence in the record to show what Applicant has done to resolve the remaining debts. The record does not have documentation about Applicant's claim of credit counseling. FC MC AG ¶ 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) does not apply. Absent documentary evidence in support of her efforts to resolve the delinquent debts or a payment plan in place, her current financial status and future ability to meet financial obligations remain a question because there are no indications her financial problems are being resolved or under control.

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 Applicant.

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 53-year-old employee who has held a security clearance for almost 30 years. She has had several challenges over the years with employment and her husband's illness and disability. These are circumstances beyond her control. It does not appear that she lived beyond her means, but there is no documentation to show what she has done recently to pay her delinquent debts. Her 1997 bankruptcy is not at issue due to its age, but there is no explanation as to why that occurred, and it shows a pattern of some financial instability. The 2012 Chapter 13 bankruptcy was a legitimate means to resolve her debts, but it was dismissed because she could not continue to make the monthly payments. With no other information provided, other than Applicant's time line of unemployment and explanation of her husband's medical condition, I cannot find that she has met her burden. She has not presented mitigation in this case due to lack of any documentary evidence.

The Government's evidence as contained in this FORM reflects Applicant's inability or unwillingness to fully meet her financial obligations. Applicant's unresolved delinquent debts combined with her inability to meet financial obligations, and apparent financial distress, both in stressful circumstances and when gainfully employed, establishes unmitigated security concerns under the financial considerations guideline. Absent documentary evidence in support of resolution of the SOR debts, information on her current financial status and future ability to meet financial obligations, mitigation credit is not appropriate.

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-i:	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 grant Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge