



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



In the matter of:)
)
) ISCR Case No. 12-05856
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on January 24, 2012. On September 3, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.²

¹ Also known as a Security Clearance Application (SCA).

² 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* (Directive) (January 2, 1992), as amended; and the adjudicative guidelines (AG), implemented by the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. ¶ 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant responded to the SOR on November 12, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 15, 2016, scheduling the hearing for September 14, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Exhibits (AE) A through C, which were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on September 27, 2016. The record was held open for Applicant to submit additional information. She submitted AE D through L, which were admitted without objection.

Findings of Fact

The SOR alleges Applicant is indebted on 19 delinquent debts totaling approximately \$37,000. In addition, the SOR alleges Applicant filed Chapter 13 bankruptcy in 2006, which was dismissed in 2008; gambled up to twice per month from 2006 to 2008, and was treated for a gambling habit in 2013; and improper use of a company credit card. Applicant admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is 53 years old and is employed in the security field for a defense contractor since 2004. She married in 1989 and divorced in 1999. She has three children, ages 22, 16, and 15. The two younger children are in high school and live with her, while her oldest child graduated from college and is employed in another city. She has a security clearance, and is seeking to renew it.

The SOR alleges 19 delinquent debts, some of which date back to 2008. Applicant's actions with respect to the SOR allegations and the current status are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Student Loan account for \$19,653.	Delinquent since 2012. Applicant made \$5 payments per week for one year, but fell behind after program expired. In September 2016, Applicant received temporary forbearance pending approval of income-based repayment plan.	Efforts made to pay under past repayment plan, but fell into delinquency at the conclusion. Renewed efforts to obtain payment plan since hearing, but no documentary evidence of a final plan and payments submitted. Not resolved.

1.b – h, j, l – m, o, p, and s. Includes credit card, medical, and telephone debts.	No payments made toward delinquent debts.	Not resolved.
1.i Check to casino with insufficient funds for \$107.	No payments made toward delinquent debt.	Not resolved.
1.k Judgment for unpaid rent from 2009 for \$6,165.	Applicant's partner left rental and stopped contributing to payments. No payments made toward judgement.	Not resolved.
1.n Returned check with insufficient funds for \$109.	No payment made,	Not resolved.
1.q Collection for unpaid rent for \$5,444.	Applicant left home because of domestic violence. No resolution on collection account.	Not resolved.
1.r Debt to electric utility for \$132.	Applicant paid up to date to get utility reinstated.	Resolved

The SOR also alleges three financial issues that are not current delinquent debts. Applicant filed Chapter 13 Bankruptcy in 2006, which was dismissed in 2008 for failure to complete the repayment plan. (SOR ¶ 1.t) Applicant gambled one to two times per month from 2006 – 2008 to escape her abusive spouse, and continued on occasion until 2014. She received treatment for depression, which included discussion of her gambling. (SOR ¶ 1.u) She currently gambles on occasion at casino slot machines. In 2011, Applicant improperly used her corporate credit card to charge personal items such as fuel and tires for her car. (SOR ¶ 1.v) She acknowledged violating company policy but believed she had no other option than to use the card in order to repair her car to get to work. She immediately paid \$574 to reimburse the creditor. The card was confiscated by the company but will be returned to her if required for official travel.

Applicant suffered periods of abuse and on two occasions, she left her home in 2002 and 2010 as a result. She called the police on her husband on one occasion, but did not follow through and eventually returned to him. She expended significant time and financial resources fighting for custody of her children. Her pay has been garnished in the past to pay for child support, but she never sought child support while she had custody. She was able to see her oldest child successfully complete college, and is hoping for the same for her other two children.

Applicant essentially lives from paycheck-to-paycheck. She claims to have about \$700 per month remaining after paying monthly expenses, but typically uses those funds for the care of her children. She is paying back a loan from her 401k account that was used to pay debts and expenses, and has about \$5 in a savings account. After her hearing, she sought the advice of a non-profit financial counselor, and was to have a first meeting in October 2016. She submitted her performance appraisals from 2006 to 2015, and two letters of support from her facility security officer and an associate security manager, both of which were nearly identical in language. In their letters of support, they described her generally as trustworthy, extremely dedicated, well respected, and sincere.

Law and 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 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(a), 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.

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, 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 clearance decision.³ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

Egan, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁵

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 Exec. Or. (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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) 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; and

⁵ *Egan*, 484 U.S. at 531.

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, “chasing loses” (i.e. increasing the bets or returning another day in an effort to get event), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant incurred longstanding delinquent debts that have largely gone unresolved. She intentionally used a corporate credit card to improperly charge personal expenses. The evidence is sufficient to raise AG ¶¶ 19(a), 19(b), and 19(d) as disqualifying conditions.

Applicant’s gambling has not been shown to raise disqualifying condition AG ¶ 19(i), in that the evidence does not support an addiction or compulsive habit, concealment of losses, borrowing money to fund her gambling, or family conflicts as a result of her gambling. Therefore, the allegation in SOR ¶ 1.u does not raise a disqualifying condition *per se*, although gambling money while faced with delinquent debts, writing checks with insufficient funds, and borrowing from a 401k to pay debts may be considered under a financial responsibility and whole-person analysis. SOR ¶ 1.u is concluded for Applicant. Likewise, Applicant’s use of the bankruptcy court to address her debts as alleged in SOR ¶ 1.t is not disqualifying. Although her failure to complete the Chapter 13 plan may raise issues of financial irresponsibility, and the debts may be individually alleged in the SOR, the act of filing an unsuccessful Chapter 13 alone is not a disqualifying condition. SOR ¶ 1.t is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant allowed her debts to remain unresolved for many years. Despite an effort to make reduced payments through a Chapter 13 bankruptcy plan, she was unsuccessful and the debts remained in a delinquent status. Although she suffered periods of difficult relationships and divorce that may have contributed to her financial problems, she has been steadily employed since 2004 and has resolved only one delinquent debt, a utility bill. She has not shown evidence of good-faith efforts to resolve the remaining debts, nor has she established a financial track record to show similar issues are unlikely to recur.

Her financial issues have been longstanding, remain recent and ongoing. There is no evidence of completed financial counseling except for pre-bankruptcy counseling presumably required before she could file a bankruptcy petition. There is no evidence that Applicant's financial problems are under control, or that she has the intention or ability to address her debts.

The utility debt in SOR ¶ 1.r is resolved. Applicant's one-time use of her corporate credit card for personal expenses (SOR ¶ 1.v) has been mitigated by her immediate reimbursement of the charges and the passage of five years since the event without additional infractions. AG ¶ 20(a) applies. Applicant has made a renewed effort to begin repayment of her student loans alleged in SOR ¶ 1.a, but has not shown sufficient effort toward resolution of the delinquency.

Although mitigating condition AG ¶ 20(b) partially applies to her delinquent debts, Applicant has not acted appropriately under the circumstances. The remaining mitigating conditions are not applicable. Her overall financial responsibility and her current financial condition casts doubt on her reliability, trustworthiness, and good judgment. Her minimal efforts to resolve her debts so far have been inadequate to demonstrate that her financial circumstances are under control or that she is willing and able to meet her past and future financial obligations.

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 all of the potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Applicant has not resolved the majority of her delinquent debts. She attempted Chapter 13 bankruptcy, but was unsuccessful in following the plan and abandoned the effort. She suffered periods of abuse and a difficult marriage, but it does not account for her significant unresolved debts since her divorce in 1999. In addition, Applicant resorted to gambling as an escape from her relationship troubles, but did not have the funds to put at risk given her longstanding delinquent debts, and she has not stopped gambling even when confronted with her current financial situation. Likewise, her decision to improperly charge personal expenses to her corporate credit card shows an element of desperation brought on by her poor financial condition, which is indicative of someone who is not in control of her finances.

Overall, the record leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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 – q; and 1.s:	Against Applicant
Subparagraphs 1.r, 1.t, 1.u, and 1.v:	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.

Gregg A. Cervi
Administrative Judge