



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



In the matter of:)
)
) ISCR Case No. 12-12006
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Department Counsel
For Applicant: *Pro se*

08/18/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance. Applicant has not mitigated the security concerns raised by her history of financial problems and her unresolved delinquent debts which are in excess of \$37,000. Clearance is denied.

Statement of the Case

On August 27, 2015, the 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 and recommended her case be submitted to an administrative judge for consideration.

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 answered the SOR and requested a decision without a hearing.² The Government submitted its written case on December 3, 2015. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on January 7, 2016, and did not respond. The case was assigned to me on March 14, 2016. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 3, 5 through 10, and 12 without objection. GEs 4, 11, 13 are excluded as explained below.

Procedural Issues

Ruling on Admissibility of Reports of Investigation (ROI)

GEs 4, 11, and 13 are ROIs summarizing the interview Applicant had with a background investigator in March 2014, May 2009, and August 2012, respectively. These interviews are not authenticated as required under ¶ E3.1.20 of the Directive. Footnotes 1 through 3 of the FORM advises Applicant of this fact and further cautions Applicant that if she fails to object to the admission of the interview summaries in her response to the FORM that her failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to the FORM, or specifically to footnotes 1 through 3, does not demonstrate that she understands the concepts of authentication, or waiver and admissibility. It also does not establish that she understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GEs 4, 11, and 13 are inadmissible and I have not considered them.

Ruling on Proposed SOR Amendments

Also embedded in the FORM is a motion to amend the SOR. The amendment contains three sections. In section 1, Department Counsel moves to delete the allegations in SOR ¶¶ 1.a, 1.h, 1.i, 1.o, 1.p, and 1.r. In section 2, Department Counsel moves to amend SOR allegations, 1.n and 1.q to correct clerical errors in each allegation. Specifically, Department Counsel seeks to change the creditor alleged in SOR ¶ 1.n to conform to GE 6, a credit report dated February 20, 2014. Department Counsel seeks to amend SOR ¶ 1.q to reflect that Applicant filed for Chapter 13 bankruptcy protection in May 2012, not May 2013 as alleged. The amendment's proposed in sections 1 and 2 are granted.

In section 3, Department Counsel moves to add SOR ¶¶ 1.s through 1.z to reflect the unpaid accounts remaining after Applicant's May 2012 bankruptcy petition was dismissed in October 2013. The amendments proposed in section 3 are denied. The allegations are unnecessarily cumulative. The bankruptcy is alleged in SOR ¶ 1.q, and the petition is included in the record as GE 8, putting Applicant on adequate notice that the Government has concerns about the debts included in the bankruptcy petition.

Findings of Fact

² GE 3.

Applicant, 51, has worked for a federal contractor since August 1990. According to Applicant's January 2014 security clearance application, this is her first application. However, the Government's Exhibits suggests that Applicant was also investigated for eligibility in 2009 and 2012. On her January 2014 application, Applicant disclosed that she filed for Chapter 13 bankruptcy protection in October 2013 and that she had a mortgage loan that was foreclosed in February 2012. The ensuing investigation also revealed that Applicant owed \$37,846 on 11 delinquent accounts and that she has had financial problems since at least 2009.³

Applicant claims to have paid off the debt alleged in SOR ¶ 1.b⁴ and to have offered settlement payments for the accounts alleged in SOR ¶¶ 1.d, 1.e, 1.g, 1.k, and 1.m. However, she provided no documentation to corroborate her claims. Applicant admits SOR ¶ 1.q regarding her Chapter 13 bankruptcy petition, which was discharged in October 2013. According to the trustee reports, the petition was dismissed for failure to make plan payments. Applicant claims that she became unable to make the payments after her husband was laid off from his job. Applicant made payments under the plan from May 2012 to August 2013; the majority of the proceeds went to the mortgage on her current residence. At the time the petition was dismissed, none of the creditors received any distributions from the trustee. Applicant has not provided any evidence to suggest that the debts in the dismissed petition have been resolved.⁵

Applicant denies SOR ¶ 1.c, but provides no explanation for the basis of her dispute. She also denies owing SOR ¶¶ 1.f, 1.l, and 1.n because she claims the debts no longer appear on her credit report. The debts appear on the credit reports in the record and Applicant does not explain why she is relieved of her responsibility to pay them.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

³ GE 3, 5-10, 12.

⁴ SOR ¶ 1.j appears to be a duplicate of the account alleged in 1.b. Accordingly, SOR 1.j is decided in Applicant's favor.

⁵ GE 2, 8.

⁶ GE 2.

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.

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 decision.

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.”⁷

The SOR alleges that Applicant owes \$37,846 in delinquent accounts and that she filed for Chapter 13 bankruptcy protection in May 2012, which was ultimately dismissed in October 2013 for failure to make plan payments. The record supports a *prima facie* case that Applicant has a history of not meeting her financial obligations and that she has demonstrated an inability to do so.⁸ Applicant failed to present evidence to mitigate the security concerns. Although she claims to have resolved several of the debts, she failed to provide any corroborating documentation. She also failed to present a legitimate basis for disputing the accounts she denies or claims that she no longer owes. Furthermore, given that Applicant has failed to provide any information about the status of the debts in her dismissed bankruptcy petition and her financial problems appear to be ongoing.

After reviewing the record, I conclude that doubts remain about Applicant’s security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, mitigate the financial concerns, or establish

⁷ AG ¶ 18.

⁸ AG ¶¶ 19(a) and (c).

evidence of financial rehabilitation and reform. The security concerns raised in the SOR remain. Following *Egan*⁹ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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:	AGAINST APPLICANT
Subparagraph 1.a, 1.h, 1.i. 1.o. 1.p, 1.r:	Withdrawn
Subparagraph 1.j:	For Applicant
Subparagraphs 1.b - 1.g, 1.j – n, 1.q:	Against Applicant

Conclusion

Based on the record, 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.

Nichole L. Noel
Administrative Judge

⁹ *Navy v. Egan*, 484 U.S. 518 (1988).