



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04185

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

08/16/2016

Decision

HOWE, Philip S., Administrative Judge:

On March 4, 2013, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On October 9, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 23, 2015. She answered the SOR in writing on July 28, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 15, 2015, and I received the case assignment on October 29, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 18, 2015, and I

convened the hearing as scheduled on December 9, 2015. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified. She did not submit any exhibits. She was given two weeks, until December 23, 2015, to send in any exhibits she wanted included in the record (Tr. 29). She did not send in any additional exhibits. The record closed December 23, 2015.

DOHA received the transcript of the hearing (Tr.) on December 16, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR Applicant denied the factual allegations in Paragraphs 1 and 2 of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 52 years old, married with one child and five stepchildren. She works for a defense contractor. She has worked there continuously since approximately 1996. Applicant earns about \$49,000 annually and her disabled husband receives about \$24,000 in payments annually. (Tr. 12-14; Exhibit 1)

Applicant's SOR lists three delinquent debts. Applicant claims the first one for \$9,301 is no longer on her credit report. The second debt she contends she is disputing. The third debt she asserts she paid. The debt total as listed in the SOR is \$18,985. The personal conduct issues alleged pertain to Applicant denying on her e-QIP and to the government investigator that she had any delinquent debts. (Tr. 17-27; Exhibits 1-5)

In SOR Subparagraph 1.a Applicant is alleged to owe \$9,301 to a bank. Applicant contends that because the debt does not appear on one of her credit reports, it is not owed by her. The debt originated in 2008. Her last contact with the creditor was 2011. However, in 2013, after being confronted with the debt, Applicant explained to the government investigator that she co-signed for a car loan for her son and he defaulted on it. Any correspondence from the creditor Applicant sends to her son who is supposed to pay on the loan. She does not have any information about the status of the loan. She does not know if her son, who is still in the military, has arranged to repay the loan. Applicant contends the debt is resolved because the creditor "charged it off." However, Applicant made no payments on the debt and it is, therefore, unresolved. (Tr. 17, 18, 28; Exhibits 2-5)

In SOR Subparagraph 1.b Applicant is alleged to owe a debt collection firm \$9,430. The September 2015 credit report shows the debt as \$17,957, including interest. Applicant stated in her Answer that she was disputing the debt. The debt originated in 2008 and she stopped paying on it in 2011. Applicant contends the debt was sold and resold to various debt collectors and the amount kept rising. She claims no collector could tell her anything about the debt but that it was owed. Her last contact with a collector was in 2013. Applicant claims she asked the debt collection agency for

the basis of the debt but has not received any information from them. Until she does, she will not pay the debt. She did not submit any documents to show the basis of a dispute or that a dispute was actually filed with the creditor or its status. This debt is unresolved. (Tr. 18, 19, 30; Exhibits 2-5)

Applicant owes \$254 to a financial institution (Subparagraph 1.c). She claims it is paid, but has no documents to prove that the delinquent debt was actually paid. She thinks she paid this amount in 2009 on a physician's bill for medical treatment. At the hearing, she claimed she had a cancelled check stub and would send it in to be an exhibit. She never sent in any such document. The debt is unresolved. (Tr. 19; Exhibits 2-5)

Applicant has a budget to manage her household expenses. She attended financial counseling in 2005. She has five credit cards, some with balances due. The total due is about \$11,000, according to Applicant. (Tr. 15, 20, 21)

Applicant is alleged not to have answered Section 26 of the e-QIP truthfully by failing to disclose the debts listed in Paragraph 1 of the SOR (Subparagraph 2.a). She contends her son entered the military and she thought he made a payment arrangement with the creditor for the debt alleged in subparagraph 1.a. Therefore, she did not think she had to disclose the debt on which she was a co-signer. She also did not disclose the second debt listed in the SOR. She claims it was her first time completing an e-QIP and had sent for a credit report, but did not have it when she completed the e-QIP. She admitted she was aware that the three debts listed in the SOR existed before she completed the e-QIP. (Tr. 22, 23 32; Exhibits 3-5)

Applicant is alleged not to have disclosed her delinquent debts to the government investigator during a March 30, 2013 interview (Subparagraph 2.b). She denied defaulting on a loan or having debts turned over to a collection agency. Applicant's denials were contradicted by the debts set forth in Paragraph 1 of the SOR. Applicant contends that when confronted with her debts by the investigator she admitted them. She did not volunteer the information before the investigator asked her about the debts. (Tr. 24-26, 33; Exhibit 2)

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 useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$18,985 in delinquent debt from 2008 to the present time that remains unpaid. Applicant has three delinquent debts listed in the SOR. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. As more fully explained below, none of the following mitigating conditions are fully 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and
- (f) the affluence resulted from a legal source of income.

Applicant's debt delinquencies continue to the present day. There are no unusual circumstances and they continue to recur because they are unpaid. AG ¶ 20 (a) is not established.

The delinquent debts were not beyond Applicant's control. She entered into the debts voluntarily. She has not acted responsibly under the circumstances. AG ¶ 20 (b) is not established.

Applicant is not paying her debts in an orderly manner currently. Her last financial counseling session was in 2005. It has no effect on her spending and debt repayment plans. The financial problem of the unresolved debts is not under control. AG ¶ 20 (c) is not established.

Applicant has not repaid the three debts listed in the SOR. She claims she repaid the third one but did not submit any documentary proof of payment. AG ¶ 20 (d) is not established because Applicant has not made any good-faith efforts to repay her delinquent debts.

Applicant has not shown a reasonable basis to dispute any or all of the three delinquent debts. AG ¶ 20 (e) is not established.

Applicant has no affluence that comes from a legal source and it is not an issue in her proceeding. AG ¶ 20 (f) is not established.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. One condition applies:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admits she did not disclose her three debts on her e-QIP nor did she disclose and discuss them with the government investigator until he confronted her with

them at the interview after she completed the e-QIP. She deliberately did not disclose her delinquent debts on her e-QIP or to the government investigator. AG ¶ 16 (a) is established.

AG ¶ 17 provides seven conditions that could mitigate security concerns. None of them apply:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant did not disclose her debts until confronted with them by the government investigator. AG ¶ 17 (a) is not established.

No person gave Applicant improper or inadequate advice concerning the security clearance process. AG ¶ 17 (b) is not established.

The debts are not minor. The failure to disclose them on the e-QIP or to the government investigator shows her behavior is not infrequent. There are no unique

circumstances involved. Applicant knew of the debts when she completed the e-QIP and spoke with the government investigator. AG ¶ 17 (c) is not established.

Applicant has not obtained counseling to change her behavior, including paying the debts. AG ¶ 17 (d) is not established.

Applicant has not taken any steps to reduce or eliminate any vulnerability because of the unpaid debts and her repeated failure to disclose them when requested by the U.S. government on the e-QIP or to the government investigator. AG ¶ 17 (e) is not established.

The information about Applicant's delinquent debts is reliable and shown on three credit reports introduced as exhibits. AG ¶ 17 (f) is not established.

Finally, there is no allegation of association with persons involved in criminal activity, so AG ¶ 17 (g) is not applicable.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant deliberately has not paid her delinquent debts that started being overdue in 2008. She also has \$11,000 in debt on her five credit cards. So while owing past-due debts, she incurs more debt, delinquent or otherwise. The money spent on repaying her credit cards could have been used to pay the delinquent debts. She has not provided proof of payment regarding any of the SOR debts. Applicant voluntarily undertook not to pay her debts when they

became due. She also failed to disclose them deliberately. She failed to establish that security-significant conduct will not recur, as there is no change in her behavior.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her financial considerations and personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

PHILIP S. HOWE
Administrative Judge