



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



In the matter of:)
)
) ISCR Case No. 15-00808
)
Applicant for Security Clearance)

Appearances

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

05/18/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance. While Applicant's financial problems may have been caused by events beyond her control, she failed to provide documentation corroborating her statements that she has taken steps to resolve her delinquent debts.

Statement of the Case

On August 5, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations.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 February 25, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. She received the FORM on March 4, 2016, and provided a response. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 7 without objection. GE 8, is excluded as explained below. Applicant's FORM response is admitted as Applicant's Exhibit (AE) A, without objection.

Procedural Matters

GE 8 is a report of investigation (ROI) summarizing the interview Applicant had with an investigator in October 2012. The interview, which contains adverse information, is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions her that if she fails to object to the admission of the interview summary 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 Footnote 1 does not demonstrate that she understands the concepts of authentication, waiver, and admissibility. It also does not establish that she understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 8 is inadmissible and I have not considered it.

Findings of Fact

Applicant, 58, has worked for a federal contractor as a project manager since December 2011. She completed a security clearance application, her first, in August 2012. She disclosed a state tax lien, now resolved, and eight delinquent accounts. The SOR alleges that Applicant owes approximately \$57,500 on seven delinquent accounts.

Applicant's financial problems began in 2005, when the youngest of her two children, then 15, began experiencing problems at school. Applicant and her husband incurred significant costs related to a wilderness intervention program as well as private school tuition for their son. In 2006, Applicant's husband decided he no longer wanted to spend money on his son's education. Applicant began using credit cards to pay the tuition. That same year, her parents were both diagnosed with serious illnesses, requiring Applicant to provide them with financial assistance. By the time their son graduated from high school in 2008, Applicant and her husband were separated. He did not provide any financial support to Applicant. Without his income, Applicant struggled to make ends meet.

In 2011, Applicant shuttered her consulting business, accepting full-time employment as a federal contractor. She then began working on resolving her debts. Applicant stated that she paid the accounts alleged in SOR ¶¶ 1.c and 1.e in March 2014 and July 2008, respectively. She also stated that she made settlement arrangements for SOR ¶¶ 1.d, 1.f, and 1.g for less than the amounts owed. Applicant is

² GE 1.

disputing SOR ¶ 1.a; however, she did not provide a basis for doing so. The same creditor holds SOR ¶ 1.b. The debt is old and the creditor is not pursuing collection of the account. Applicant intends to pay the debt in the future. Despite an admonishment in the FORM that such documentation would be helpful to the adjudication of her case, Applicant did not provide any evidence to corroborate her claims of debt resolution.

Applicant believes that her current finances are stable. She lives within her means and has not incurred any new debt.

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.

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."³

³ AG ¶ 18.

The SOR alleges Applicant owes approximately \$57,500 in delinquent accounts. Applicant's admissions and the credit reports in the record establish the Government's *prima facie* case that Applicant has a history of financial problems that remain unresolved.⁴ The needs of Applicant's youngest son, her parents, and the dissolution of her marriage contributed to her financial problems. However, her claims that she has taken steps toward the resolution of the SOR accounts is not supported by the record.

Based on the record, doubts remain about Applicant's ongoing suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant failed to meet her burden of production and persuasion to refute or mitigate the SOR allegations. Applicant did not provide any evidence to show financial rehabilitation or reform. Accordingly, Applicant's request for access to classified information is denied.

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
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Subparagraphs 1.a – 1.g:	Against Applicant
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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

⁴ AG ¶ 19(c).