



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



In the matter of:

ISCR Case No. 15-00922

Applicant for Security Clearance

Appearances

For Government: Gina L. Marine, Esq., Department Counsel

For Applicant: *Pro se*

10/14/2016

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 August 11, 2014. On August 28, 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 for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 10, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on January 20, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit documentary material to refute, extenuate, mitigate or explain the trustworthiness concerns. Applicant received the FORM on February 5, 2016. She did not submit a response to the FORM or assert any objections to the Government's evidence. The case was assigned to me on August 28, 2016. The Government's exhibits included in the FORM (Items 1 to 6) are admitted into evidence.

Department Counsel amended the SOR by withdrawing SOR allegations ¶¶ 1.h through 1.k, since the debts were paid prior to issuance of the SOR.

Findings of Fact

The SOR alleges Applicant has seven delinquent debts totaling approximately \$60,525. Applicant admitted SOR ¶¶ 1.b, 1.d, 1.e, and 1.f., and denied the remaining allegations. The evidence supports the SOR allegations.

Applicant is 48 years old and is employed as an inspector specialist for a defense contractor since 2012. She left work on unpaid leave six weeks in 2010 while mourning the loss of her parents. She received her General Education Degree (GED) in 2002 and is currently married since 1995. She was previously married in 1984 and divorced in 1990. She has two children. She has never held a security clearance.

Applicant's actions with respect to the SOR allegations and the current status are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Bank judgment (2011) for \$2,671	Denied. Claimed settled and paid in 2013. No evidence of payment. 2015 Credit Bureau Report (CBR) shows judgment unsatisfied.	Not resolved
1.b Medical debt for \$935	Admitted. No evidence of payment presented.	Not resolved
1.c Medical debt for \$47	Denied. No evidence of payment presented.	Not resolved

1.d Camper loan debt for \$9,312	Admitted. Camper financed in 2006 and repossessed in 2011. Delinquency remaining is amount owed.	Not resolved
1.e Boat loan debt for \$33,724	Admitted. Boat financed in 2007 and repossessed. Delinquency remaining is amount owed.	Not resolved
1.f Motorcycle loan debt for \$4,662	Admitted. Motorcycle financed in 2005 and repossessed in 2011. Delinquency remaining is amount owed.	Not resolved
1.g Credit card debt for \$9,174	Denied. Used to pay general and husband's business expenses. Delinquent in 2010. Claims debt discharged by creditor. No evidence of resolution or discharge provided.	Not resolved

Applicant became financially unstable when she took six weeks of unpaid leave in 2010. She sought credit consolidation of her unsecured debt in 2010, and began making \$600/month payments. Near the end of 2010, she was advised by the debt consolidation service to file bankruptcy because of the amount of secured debt she could not consolidate. She considered bankruptcy, but decided against it. In 2013, she inherited a large sum of money after her father's property was sold, which she claims she used to pay off all unsecured debt. No documentary evidence of payments, settlements, debt forgiveness, or other resolution of the SOR debts has been provided. She reported in 2014 that she was the sole financial provider in the family.

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 *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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

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).

⁵ *Egan*, 484 U.S. at 531.

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; and
- (b) a history of not meeting financial obligations.

Applicant incurred delinquent debts in or about 2010 or 2011 that remain unresolved. The evidence is sufficient to raise the above disqualifying conditions.

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 before they became a security concern. Although she voluntarily used a period of unpaid leave after the loss of her parents, she failed to maintain her financial obligations, resulting in three repossessions with significant delinquencies owed. She has been steadily employed since 2012, but has not shown efforts to resolve the SOR delinquencies. The financial issues have been long-standing and remain recent and ongoing. There is no evidence of financial counseling, but she did briefly use a credit consolidation company. The extent of those efforts is unknown as she did not provide evidence of the consolidation plan, nor did she show the extent of payments made under the plan. Despite her claims to have resolved some debts, no documentary evidence was provided. Her overall financial responsibility and willingness to comply with rules and regulations remains a concern, and her financial condition casts doubt on her current reliability, trustworthiness, and good judgment. Her efforts have been inadequate to demonstrate that her financial circumstances are under control or that she is willing and able to meet her past 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.

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 – 1.g:	Against Applicant
Subparagraphs 1.h – 1.k:	Withdrawn

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