



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



In the matter of:)
)
) ISCR Case No. 15-01317
)
Applicant for Security Clearance)

Appearances

For Government: Candace Garcia, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2017

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 March 7, 2013. On September 14, 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 (EO) 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 December 8, 2015, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 23, 2016, scheduling the hearing for October 3, 2016. The case was previously assigned to another administrative judge who was unable to hear it on the date scheduled. I was substituted and convened the hearing as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on October 12, 2016. The record was held open for Applicant to submit documentary information. She submitted AE A through E,³ which were admitted without objection.

Findings of Fact

The SOR alleges 16 delinquent debts and a Chapter 13 bankruptcy in 1999, which was dismissed the same year. Applicant admitted all the allegations with explanations and one account disputed.⁴ Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is 49 years old and has been employed by a government contractor since August 2016, and is seeking to renew her security clearance. She previously worked for another government contractor from August 2015 to August 2016. She married in 2003 and separated in 2009. She previously married in 1989 and divorced in 1998. She has three adult children.

Applicant filed Chapter 13 Bankruptcy in 1999, but the case was dismissed because Applicant did not follow through with the repayment plan. She claimed about \$113,000 in liabilities, and her home was foreclosed and sold in a short sale.

She again filed Chapter 13 Bankruptcy in July 2015, and the plan was approved in January 2016. Her plan base is \$74,876, and at last notice, she paid \$9,854 into the plan. As of March 2016, she was required to pay \$500 per month for eight months, then \$1,363 per month for the remaining 52 months. Applicant testified that she has been making payments since October 2015, but missed payments in September 2016 (hearing held in October 2016) and had not paid the October 2016 installment as of the hearing. Her post-hearing submission appears to show missed payments in September (for nonsufficient funds), October, and November 2015, and January 2016. The last payment of record was August 2016.⁵ In addition to the SOR debts, Applicant testified that she is delinquent on 2015 state income taxes. They have been included in her Chapter 13 bankruptcy plan, along with delinquent student loans.

³ Applicant's post-hearing submission consisted of: (A) Memo with list of documents and copy of Notice of Hearing; (B) Personal Monthly Budget; (C) Bankruptcy Court documents (incomplete filing) and mortgage statement; (D) Annotated SOR; (E) Portion of a credit report (index and summary pages 1 and 2 of 133).

⁴ Answer. Note, in several responses in Applicant's Answer, she noted that she is "working to make payment of my Credit with a Debt Consolidation." In testimony, she explained that she was referring to Chapter 13 bankruptcy, and that she has never used a debt consolidation service.

⁵ AE C.

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

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Filed Chapter 13 Bankruptcy in 1999	Admitted. Applicant did not follow through with plan. Action dismissed in 1999.	Chapter 13 dismissed.
1.b Phone utility debt for \$2,885	Claims disputed debt but that she owes a smaller amount that may be included in Chapter 13.	No evidence of dispute or other resolution. Not resolved.
1.c Cell phone utility debt for \$1,953	Applicant believes account paid in 2014 or 2015.	No evidence of payment or resolution provided. Not resolved.
1.d Phone utility debt for \$1,858	Claims duplicate of 1.b, but Credit Bureau Report (CBR) account numbers are different.	No evidence of duplicate or resolution provided. Not resolved.
1.e Consumer collection for \$470	Included in Chapter 13 bankruptcy.	Verified included in Chapter 13.
1.f. Cable debt for \$420	Claims debt for unreturned equipment.	No evidence provided that equipment returned or other resolution. Not resolved.
1.g Consumer collection for \$326	Included in Chapter 13 bankruptcy.	Verified included in Chapter 13.
1.h Medical collection for \$166	Testified that she made arrangements to resolve medical debts prior to filing bankruptcy.	No evidence of resolution of debt or inclusion in Chapter 13. Not resolved.
1.i Medical collection for \$50	Claimed in Personal Subject Interview (PSI) that paid collection. Testified that she made arrangements to resolve medical debts prior to filing bankruptcy. Post-hearing claimed in Chapter 13 bankruptcy.	No evidence of resolution of debt or inclusion in Chapter 13. Not resolved.

1.j Consumer account charged off for \$48	Included in Chapter 13 bankruptcy.	Verified included in Chapter 13.
1.k Medical collection for \$43	Claimed in Personal Subject Interview (PSI) that paid collection. Testified that she made arrangements to resolve medical debts prior to filing bankruptcy. Post-hearing claimed in Chapter 13 bankruptcy.	No evidence of resolution of debt. Not resolved.
1.l Credit charge off for \$16,281	Vehicle repossession in 2015. No payment of deficiency. Claims account is closed. Wants to amend Chapter 13 to include debt.	No evidence of resolution of debt or inclusion in Chapter 13. Not resolved.
1.m Insurance judgment for \$4,845	Included in Chapter 13 bankruptcy.	Verified included in Chapter 13.
1.n Credit collection for \$1,230	Claimed intended to resolve or include in Chapter 13.	No evidence of resolution of debt or inclusion in Chapter 13. Not resolved.
1.o Credit collection for \$2,115	Claims in Chapter 13 bankruptcy.	No evidence of resolution of debt or inclusion in Chapter 13. Not resolved.
1.p Credit collection for \$1,192	Claimed intended to resolve or include in Chapter 13.	No evidence of resolution of debt or inclusion in Chapter 13. Not resolved.
1.q Credit collection for \$250	Claimed in PSI that collection was paid. Then testified that she intended to resolve or include in Chapter 13.	No evidence of resolution of debt or inclusion in Chapter 13. Not resolved.

Applicant states she earns about \$100,000 per year in her current job. The undated budget she provided (AE B) shows a \$555 per month net remainder. However, she testified that she had a negative net remainder for three months before beginning her current employment. She stated that in September 2016, she was able to meet her monthly expenses, but had nothing left over. She currently has about \$10 in a checking account, no savings, and about \$600-\$700 in a 401k account after she withdrew \$20,000 to \$30,000, to use in part to assist her mother to pay her mortgage.

Applicant purchased her current home in 2006, but fell behind on her mortgage payments in 2010. She completed modifications to her mortgage, the last in 2013, but

continued to fall behind in payments. In 2014 she was in an accident, and recovered about \$9,000, which was used to repair her home, but not pay the mortgage. She has not received formal financial counseling other than the minimal counseling required before filing bankruptcy. Her current home mortgage and student loans are included in her Chapter 13 bankruptcy.

The summary portion of the report she provided (AE E) alludes to three to five collection accounts, but the detailed account listings were not provided.

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.⁶ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁷

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*, EO 10865, and the

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *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).

Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁸

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 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

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’s history of delinquent debt is documented in her credit reports, SOR response, PSI, statement, and bankruptcy documents. Applicant incurred longstanding delinquent debts, many that have gone unresolved. She filed Chapter 13 Bankruptcy and began making payments in October 2015, but she has missed payments and all of her delinquent debts were not included in the bankruptcy. The evidence is sufficient to raise AG ¶¶ 19(a) and (b) as disqualifying conditions.

⁸ *Egan*, 484 U.S. at 531.

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's responses to the SOR, PSI, and testimony were largely inconsistent. Her various statements about her past efforts to resolve her debts show, at a minimum, a lack of fundamental understanding of her financial circumstances. I am left with a muddled picture of the extent actions were taken to resolve the majority of the SOR debts.

No mitigating conditions fully apply; however, Applicant presented some important positive financial information. Applicant was unemployed for about three months in 2006, and again in 2010. She claims the 2010 period of unemployment and subsequent underemployment marked the beginning of her current financial problems, including her mortgage delinquency and inability to pay student loans. She is currently separated from her spouse. These are factors largely beyond her control. Applicant made efforts to renegotiate her current mortgage and, in 2015, filed a Chapter 13 bankruptcy, in which she has begun payments under the plan.

However, Applicant allowed her debts to remain unresolved for many years after an unsuccessful Chapter 13 bankruptcy in 1999. Her financial problems continued, her home was foreclosed, and she filed bankruptcy again in 2015. She included some of her SOR debts, her delinquent mortgage, taxes and student loans, but not all of the debts listed in the SOR. She provided scant evidence of the current Chapter 13 filing, and only two pages of her current credit bureau report. The summary portion of the report she provided alludes to three to five collection accounts, but the detailed account listing was not provided.

Applicant testified that she has been making payments on her Chapter 13 plan since October 2015, but missed payments in September 2016 (hearing held in October

2016) and had not paid the October 2016 installment as of the hearing date. Her post-hearing submission appears to show missed payments in September (for nonsufficient funds), October, and November 2015, and January 2016. The last payment of record was August 2016. In addition to the SOR debts, Applicant testified that she is delinquent on her 2015 state income taxes and student loans. They have been included in her Chapter 13 bankruptcy plan. 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 problems have been longstanding, and remain recent and ongoing. There is no evidence of completed financial counseling except for pre-bankruptcy counseling presumably required before she could file a petition. There is no evidence that Applicant's financial problems are under control, that she has the intention or ability to address her remaining delinquent debts, or that she has the means and intent to remain financially solvent in the future.

Applicant's use of the bankruptcy court to address her debts as alleged in SOR ¶ 1.a is not disqualifying, however her failure to follow through with the plan resulting in dismissal of the action reflects an inability or unwillingness to meet financial obligations and overall financial irresponsibility. Her current bankruptcy shows an effort to resolve her financial problems through a legal means, however she has not shown that all of her debts were included and that she has made consistent payments toward her plan obligations.

Although mitigating condition AG ¶ 20(b) partially applies as Applicant faced conditions beyond her control that contributed to her current financial predicament, she has not acted responsibly under the circumstances. Applicant also received financial counseling per the bankruptcy court requirements. AG ¶ 20(c) partially applies, however there is insufficient evidence that her financial problems are under control. The remaining mitigating conditions are not applicable. Her overall financial irresponsibility and her current precarious financial condition cast doubt on her reliability, trustworthiness, and good judgment. Her efforts to resolve her debts prior to bankruptcy, and the failure to include the remaining SOR debts show that her financial circumstances are not fully under control. I also find that her current financial status does not demonstrate an ability to meet future financial obligations. Based on her current financial condition, I believe that financial delinquencies may reoccur in the future.

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 in 1999 but did not follow through. She gave conflicting and unsubstantiated information about her efforts to resolve debts. She successfully refiled bankruptcy in 2015, but has not made consistent payments as required under the plan. Other debts were not shown to be included in the bankruptcy, and her current CBR shows continued collection accounts. Finally, her current financial status remains precarious and the likelihood of future financial difficulties remains a concern.

Despite being provided an opportunity to submit post-hearing evidence in mitigation, Applicant chose to provide incomplete documents that failed to support her testimony or convince me that her financial issues are being adequately addressed and are under control. 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.q: 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.

Gregg A. Cervi
Administrative Judge