



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



In the matter of:)
)
) ISCR Case No. 15-01556
)
Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

08/19/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Although Applicant has made some effort to resolve her delinquent debts by filing for Chapter 7 bankruptcy protection in March 2016, it is not enough to mitigate the underlying financial considerations security concern. Applicant also intentionally falsified her March 2012 security clearance application by failing to disclose any derogatory financial information. Clearance is denied.

Statement of the Case

On September 1, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the

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.

case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing on April 13, 2016, I admitted Government's Exhibits (GE) 1 through 6, Applicant's Exhibit's (AE) A through C, and Hearing Exhibit (HE) I, Department Counsel's discovery letter to Applicant dated December 21, 2015, without objection. After the hearing, the record remained open until May 9, 2016 to allow Applicant to submit additional information about her finances. Applicant timely submitted AE D, which was admitted without objection. DOHA received the transcript (Tr.) on April 25, 2016.

Findings of Fact

Applicant, 38, works as security guard for a federal contractor. She has been in her current position since 2011. Applicant completed her most recent security clearance application in March 2012 and did not disclose any derogatory information. However, Applicant's background investigation revealed that she owed several delinquent debts. Applicant admits owing the debts, but explains that the omission of the delinquent accounts from her 2012 security clearance application was not done with intent to mislead the Government. According to Applicant, she has completed several security clearance applications since her first application in July 2006. Applicant testified that while she knew she had incurred new delinquent accounts since her initial security clearance application, she decided to follow the advice of co-workers and not change any answers on her subsequent applications to avoid raising any "red-flags."²

The SOR alleges that Applicant owes approximately \$19,000 in delinquent debts. Applicant blames her financial problems on a period of unemployment from April 2011 to October 2011 after her employer lost the contract on which she had been working. She also cites the adverse impact of providing financial assistance to struggling family members and friends from 2009 to November 2015. In addition to giving family members money, Applicant also co-signed for car loans and apartment leases. In doing so, Applicant began having difficulty paying her own financial obligations and she accumulated delinquent debt. In 2014, Applicant attempted to resolve her debt through a debt consolidation service, but she found it was not resolving her accounts as quickly as she would have liked. After withdrawing from the debt consolidation program, Applicant filed for bankruptcy protection in March 2016. However, only the debts alleged in SOR ¶¶ 1.a. and 1.b appear on the bankruptcy petition. Applicant did not know why the debts alleged in SOR ¶¶ 1.c. through 1.i were not included in the petition, nor did she provide any additional information about the status of these accounts.³

As of December 2015, Applicant no longer provides financial support to any of her friends or family members outside of her household, which includes her three teenaged children and one grandchild. She believes that she is able to live within her means. However, the most recent credit report in the record, dated December 2015

² Tr. 20-23, 44-47, 74-78; GE 1-4.

³ Tr. 24-28, 31-41, 54-69, 71; GE 2-5; AE A-D.

shows that Applicant has accumulated an additional \$14,430 in delinquent accounts, including a \$9,777 judgment.⁴

Policies

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

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.

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 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

⁴ Tr. 41-43, 52-53, 63, 72-74; GE 4.

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

Analysis

Financial Considerations

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.”⁵ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant owes \$19,000 on ten delinquent accounts and that she has two other charged off accounts. Applicant’s admissions to the alleged debts and the credit reports in the record establish 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.⁶ While she receives some credit for her efforts to resolve her delinquent debts through a debt consolidation plan in 2014 and her 2016 Chapter 7 bankruptcy petition, she did not present enough information to mitigate the financial considerations security concerns.

Although Applicant provided a copy of the service agreement she entered into with the debt consolidation service, she did not provide any information about the details or scope of the agreement. It is unclear how many of her delinquent accounts were included in her consolidation plan or how much money she paid under the plan toward the resolution of her delinquent accounts. Likewise, with her March 2016 bankruptcy petition, Applicant did not provide any explanation as to why 10 of the 12 debts alleged in the SOR were excluded from her bankruptcy application. She also failed to provide any information about her efforts to resolve the excluded accounts. Furthermore, Applicant’s financial problems are not under control as she continues to incur additional delinquent accounts.

Personal Conduct

An applicant’s personal conduct becomes a concern when her actions show questionable judgment, an unwillingness to comply with rules or regulations, or raises questions about an applicant’s ability to protect classified information.⁷ The SOR alleges

⁵ AG ¶ 18.

⁶ AG ¶¶ 19(a) and (c).

⁷ See AG ¶15.

that Applicant deliberately falsified her March 2012⁸ security clearance application by failing to disclose derogatory financial information about judgments, defaulted loans, collection accounts, charged off accounts, and past-due accounts as required. An applicant's failure to provide truthful and candid answers during the security clearance process raises issues about her reliability and trustworthiness that ultimately calls into question her ability to protect classified information.⁹ Applicant admitted the falsification in her answer to the SOR, and explained at the hearing that she chose not to disclose the delinquent accounts she accumulated since her previous security clearance application.

Making false or misleading statements to the federal government during the security-clearance process is serious misconduct, and it is not easily explained away, excused, or mitigated. An applicant is expected to provide full, frank, and candid answers throughout the investigative process. Anything less provides a rational basis for a finding against an applicant's security worthiness. None of the personal conduct mitigating conditions apply.

The evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*¹⁰ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept. Nevertheless, Applicant did not meet her ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

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.I:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

⁸ The SOR mistakenly alleges that the Applicant falsified a security clearance dated March 22, 2013. The correct date of the security clearance application at issue is March 22, 2012.

⁹ See AG ¶ 15.

¹⁰ *Navy v. Egan*, 484 U.S. 518 (1988).

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge