



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



In the matter of:)
)
) ISCR Case No. 15-01599
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

09/23/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On October 19, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on November 6, 2012. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 24, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on November 13, 2015. She admitted six and denied seven of the 13 allegations of delinquent debt with explanations. She elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on January 28, 2016. Applicant received a complete file of relevant material (FORM) on February 8, 2016, and she was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely provided information in response to the FORM. I was assigned the case on August 11, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 4) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and she could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the summary. In her response to the FORM, Applicant did not raise any objection to consideration of the information in the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 55-year-old high school graduate who has credit for some college level courses. She first married in August 1982, and divorced in October 1996. She married again in December 2002, and divorced in January 2008. She has three grown children. She has worked for a DOD contractor as an administrative assistant since February 2012. She was unemployed from February 2011 until January 2012 after returning from working as an administrative assistant for a DOD contractor in Iraq since May 2010. She worked for the DOD contractor in the United States from August 2009 before transferring to Iraq. She worked in a restaurant or was self-employed from April 2008 until August 2009. She was unemployed from September 2007 until March 2008. She drew unemployment compensation when unemployed. She was granted eligibility for access to classified information in November 2003. (Item 3, e-QIP, dated October 19, 2012; Item 4, PSI, dated November 6, 2012)

The SOR lists, and credit reports (Item 5, dated January 5, 2016; Item 6, dated February 3, 2015; and item 7, dated October 31, 2012) confirm the following delinquent debts for Applicant: an account charged off for \$6,154 (SOR 1.a); a telephone service

debt for \$173 (SOR 1.b); a federal tax lien for \$1,653 (SOR 1.c); a judgment for \$2,200 (SOR 1.d); a cell phone service debt in collection for \$976 (SOR 1.e); two cell phone service debts in collection for the same telephone company but with the same collection agency for \$150 (SOR 1.f), and \$940 (SOR 1.g); a gas credit card in collection for \$667 (SOR 1.h); credit cards in collection for \$100 (SOR 1.i), \$30,375 (SOR 1.j), \$303 (SOR 1.k), \$1,206 (SOR 1.l), \$40,352 (SOR 1.m). Applicant admits the debts at SOR 1.a, 1.d, 1.e, 1.i, and 1. l. SOR 1.e and 1.g are the same debt. She denies the remaining debts as either paid, the responsibility of her former husband, or in dispute. The amount of the delinquent debt is approximately \$85,000. All of these debts are listed on the credit reports.

Applicant's finances have been a security concern since at least 1997. She was interviewed in 1997 and 2002 by security investigators, and she provided detailed statements concerning the status of her finances. Applicant was granted eligibility for access to classified information in March 1980, October 1997, and November 2003. On her October 24, 2012 e-QIP, Applicant listed several failures to file tax returns and pay her taxes. She also listed a judgment entered against her and numerous delinquent debts. (Item 3, e-QIP, dated October 19, 2012; Item 4, PSI, dated November 6, 2012 at 1-2; Item 8, statement, dated May 28, 2002; Item 9, Statement, dated May 30, 2002; Item 10; Statement with attachments, dated September 3, 1997) Applicant asserts that her present financial problems are the result of periods of unemployment and her former second husband's failure to meet his financial obligation under their divorce decree. In her response to the SOR, Applicant presented statements from individuals that Applicant's second husband stated that she did not have to find employment because he was capable of providing Applicant with financial support.

The debt at SOR 1.a is for a repossessed car. Applicant co-signed for the car with her son. She helped him make the payments until she lost employment in 2005. The car was repossessed by the seller. Applicant has not heard from the creditor concerning the debts, and she has not made any more payments. She did not present any evidence that the debt is resolved. (Item 4, PSI, at 3)

The debt at SOR 1.b is for a cell phone account. Applicant disputed this account as a fraudulent charge. The credit bureau report lists the account as in dispute. Applicant did not present information on any actions she has taken to have the dispute resolved. The dispute and the debt have not been resolved. (Item 2, Response to SOR; Item 5, Credit Bureau Report, at 1; Item 11, Response to FORM, at 2)

Applicant did not recognize the tax lien at SOR 1.c. Applicant seems to be confused whether this tax lien arose from a debt connected to a former residence she occupied with her second husband, or it is the result of federal taxes owed after Applicant filed tax returns. Applicant told the security investigator that she did not recognize the debt. The credit bureau lists the lien as pertaining to Applicant's former residence. Applicant's second husband was awarded the rights to the residence in the divorce settlement. Applicant believed all taxes had been paid on the residence.

Applicant believes that her second husband filed their tax returns on time. In 2008, she learned the tax returns had not been filed so she filed the returns. Applicant's second husband told her he filed their tax returns. She was not asked to sign the returns because her husband told her the returns were filed electronically. When she learned the returns were not filed, she contacted the Internal Revenue Service (IRS) in 2008 and filed the returns in her name only. She did not believe that she owed any taxes, but just needed to file the tax returns. In filing her tax return, she had taxes due of approximately \$4,000. She declared that she established a payment plan with the IRS and has lowered the amount due to approximately \$1,000. She had to stop making payments in January 2012 and has not made any payments since then. She did not present any documents to verify any payments on the taxes.

Based on the information in the credit report, I conclude that the tax lien concerns Applicant's former residence. Since Applicant's former husband has been awarded the former residence in the divorce, the taxes are not her responsibility. The debt is resolved for Applicant.

The judgment at SOR 1.d was entered by a landlord for rent due on an apartment Applicant was required to rent by her second husband in anticipation of moving to a new location. Applicant's second husband informed her that he was being promoted and moved to a new location. Applicant's husband sent her to the new location with instructions to find a place to live. Applicant initially did not qualify to rent an apartment because she was not employed. However, her husband convinced the landlord to permit Applicant to sign a lease for the apartment. In her response to the SOR, Applicant provided statements from individuals who overheard Applicant's former husband express that she must sign the lease for the apartment, and he would take responsibility for the rent payments. Applicant's former husband did not move and did not take responsibility for the rent. In their divorce, Applicant's former husband was directed to pay the judgment. The judgment has not been paid. Applicant does not feel under the circumstances that she is responsible for the debt. The debt is resolved for Applicant. (Item 4, at 2)

Applicant denied the cell phone debt at SOR 1.e to the security investigator as fraudulent. The debt is duplicated at SOR 1.g. In her response to the SOR, Applicant admits the debt explaining that she intends to pay the debt when she is employed. It has not been paid. Applicant notes that the debt has been dropped from her credit report. Applicant did not present any information to verify payment of this debt. SOR 1.e is not resolved, but SOR 1.g is resolved in favor of Applicant as a duplicate debt. (Item 2, Response to SOR, dated November 13, 2015)

Applicant stated that she disputed the cell phone debt at SOR 1.f. While the credit report notes that other debts have been disputed, there is no notation that this debt is being disputed. The debt is not resolved. (Item 7, Credit Report, dated October 21, 2012, at 7)

Applicant reports that her gas credit card at SOR 1.h has been paid in full. In response to the FORM, Applicant presented an account statement that payments have been made and the debt is balance is only \$20.08. Applicant stated the debt has been paid. The debt is resolved. (Item 11, Response to FORM, Statement, dated January 10, 2008)

Applicant admits the medical debt for \$667 for emergency room treatment listed at SOR 1.i. The debt arose while she was still married to her former husband. She thought he had paid the debt. Applicant presented no information on any action she has taken to resolve the debt. The debt is not resolved.

Applicant told the security investigator that the debt of \$30,375 at SOR 1.j is for a credit card she used for general expenses. (Item 7, Credit Report, at 11) She did not know why the balance was so high. In her response to the SOR, Applicant denied the debt stating it was being disputed and was closed. In response to the FORM, Applicant stated she paid the debt but it was being disputed. The credit bureau report does not indicate this debt is in dispute. Applicant did not present any evidence that at the debt has been paid or disputed. The debt is not resolved.

The bank debt at SOR 1.k is for an overdrawn fee from Applicant's checking account. Applicant told the security investigator that she did not recognize the debt. In her response to the SOR, Applicant said she paid the debt directly to the bank and not the collection agency. In her response to the FORM, Applicant included a notice from the bank that the account was overdrawn. The notice showed a balance due of \$208 and not that the debt has been paid. She did not include any information to verify that the account had been paid. The debt is not resolved.

The debt at SOR 1.l is a delinquent credit card used for general expenses when she was married. Applicant told the security investigator that she thought her former husband had paid the debt. She learned the debt had not been paid or resolved. In response to the SOR, Applicant admitted the debt and her intention to pay it when she found employment. She also noted that the debt is no longer on her latest credit report. Applicant did not present any information to verify the debt had been paid or resolved. The debt is not resolved.

The debt for \$40,332 at SOR 1.m is for a recreational vehicle purchased by Applicant's former husband that she co-signed. In the divorce decree the vehicle was awarded to her husband. Applicant believes she is not responsible for the debt. She is disputing it with the credit reporting agency. Since the vehicle was purchased by her husband, it is his debt. The debt is resolved for Applicant.

In her response to the FORM, Applicant attached a letter of recommendation from a government civilian employee who is a friend of Applicant. He wrote that Applicant is an upstanding member of the community and maintains the highest level of trustworthiness. She has never violated the trust of her family, co-workers, or friends. He recommends that she be granted eligibility for access to classified information.

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 must be considered 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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.

Analysis

Financial Considerations

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, thereby raising 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debts as documented in her credit reports, by her admissions to the OPM investigator, and her response to the allegations in the SOR. All of Applicant's SOR debts are listed on the credit reports at Items 5, 6, and 7. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt. Once the Government has established delinquent debt, the Applicant has the responsibility to refute or mitigate those debts.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

(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 problems 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 has initiated a good-faith effort to repay the 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 for the dispute or provides evidence of actions to resolve the issue.

The mitigating conditions apply in part. Mitigating conditions ¶ 20(a) and ¶ 20(c) apply to some of the debts as the debts were caused by conditions largely beyond her control or under unusual circumstances unlikely to recur. Applicant's second husband was awarded property and vehicle rights in the divorce degree making him responsible for the expenses related to the delinquent debts noted in SOR 1.c and 1.m. Applicant's second husband forced her to rent an apartment and then never followed her to a new location causing debt as noted in SOR 1.d. Applicant provided information to establish that she paid the gas credit card debt at SOR 1.h.

The mitigating conditions do not apply to the remaining allegations of delinquent debts. Applicant has not shown that she acted reasonably and responsibly to resolve her remaining financial problems. Applicant's other debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. She noted that she disputed some debts but she has not provided adequate information to show the basis of the dispute or any actions she has taken to try to resolve the dispute except to just file the dispute.

She has not established a good-faith effort to pay her financial obligations. For a good-faith effort, there must be an ability to pay financial obligations, the desire to pay then, and evidence of a of a good-faith effort to pay or resolve the obligations. Good faith means acting in a way that shows reasonableness prudence, honesty, and adherence to duty and obligation. A systematic method of handling financial obligation is needed. Applicant must establish a meaningful track record of payment of financial obligations. A meaningful track record of payment can be established by evidence of actual payments or reduction of obligation through payment of debts. A promise to pay financial obligations is not a substitute for a track record of meeting obligations in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant presented information to establish payment of only the debt alleged at SOR 1.h. While she claims to have made payments on other debts, she did not present evidence to verify and establish the payments.

The evidence does not support responsible management of her finances. Her financial problems are not under control. Applicant claims lack of knowledge of some of the debts, but she made no attempt to learn of the debts. She knows about some of the debts, but she has not established that she contacted the creditors. Based on Applicant's failure to verify her debts and make any arrangements to pay her debts, it is clear that she has not been reasonable and responsible in regard to her finances. Her lack of reasonable and responsible action towards her finances is a strong indication

that she may not protect and safeguard classified information. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. I considered the recommendation from a government employee that she be granted eligibility for access to classified information. Even though Applicant has been gainfully employed at a good-paying job since January 2012, she did not provide sufficient credible documentary information to establish that she has taken reasonable and responsible action to resolve her financial problems. Applicant did not demonstrate appropriate management of her finances and a consistent record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation.

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.b:	Against Applicant
Subparagraphs 1.c – 1.d	For Applicant

Subparagraphs 1.e – 1.f:	Against Applicant
Subparagraphs 1.g – 1.h:	For Applicant
Subparagraphs 1.i – 1.l:	Against Applicant
Subparagraph 1.m:	For 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge