



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



In the matter of:)
XXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-01826
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro Se*

03/30/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 25 September 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 7 June 2016 and I convened a hearing 22 August 2016. DOHA received the transcript 2 September 2016.

¹Consisting of the transcript (Tr. I), Government exhibits (GE) 1-5, hearing exhibit (HE) I, and Applicant exhibits (AE) A-I. AE G-I were timely received post hearing. The record closed on 2 March 2017, when Department Counsel stated no objection to AE I.

²DoD acted 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant denied the SOR financial allegations, except SOR 1.e, 1.g, and 1.p. She denied the falsification allegation. She is a 46-year-old senior financial analyst employed by a defense contractor since September 2007. She was previously employed in the same position from September 2002 until that company merged with her current employer. She seeks to retain the security clearance she was issued in the past.³

Applicant married in July 1998. Her husband became gravely ill in October 2010, and became unable to work. She divorced him in May 2015 (Tr. 29-30). Her father died in March 2014, and a favorite aunt died in May 2014 (Tr. 55). She earns \$69,000 annually. She has \$500 positive monthly cash flow, but no savings, and no retirement account (Tr. 30).

The SOR alleges, and Government exhibits (GE 2-5) substantiate, 20 delinquent debts totaling about \$26,000. Applicant admits three allegations totaling \$3,200. However, record evidence shows that SOR 1.e is the same debt as SOR 1.p, so the admitted total is \$1,800. On 25 November 2015, Applicant entered into a settlement agreement with the collection agent (Answer), and completed the payment plan on 26 March 2016 (AE B).

SOR 1.a is the same debt as SOR 1.b, and both accounts were fraudulent (AE A). SOR 1.c was her sister's account; SOR 1.d was her ex-husband's account, and both have been removed from her credit reports. SOR 1.f was closed on 2 December 2015 after the creditor determined that the account was fraudulent (Answer). Applicant also established that the judgment at SOR 1.n belonged to a different person.

Applicant paid half of SOR debt 1.g on 26 October 2015 (Answer), and paid the other half on 14 January 2016 (AE G). Applicant disputed the medical debts at SOR 1.h-1.i and 1.k-1.l because she had medical insurance. Apparently, the accounts were removed from her credit reports. However, that removal does not necessarily mean that she did not owe the money. The fact that she had medical insurance does not mean that she was not responsible for deductibles or co-payments on the accounts.

Applicant disputed SOR 1.j with the credit bureau, but the account was upheld (Answer). On 6 September 2016, Applicant arranged a settlement repayment plan for SOR 1.m, with payments to continue through September 2017 (AE G). However, she made a lump-sum payment of the full balance on 17 September 2017 (AE I).

Applicant reported no financial problems on her March 2014 clearance application. During her April 2014 interview with a Government investigator (GE 2), she stated that she was unaware of the debts listed in her March 2014 credit report (GE 5),

³She disclosed no clearance information on her clearance application (GE 1), and told the Government investigator she could recall no details about when her clearance was issued (GE 2).

until the agent brought them to her attention. She asserts that she began to address the debts as soon as she became aware of them (Tr. 28). However, it does not appear in her records when she actually began to address them. It also appears that her main focus was disputing items on her credit report and having them removed, rather than investigating whether the accounts were hers. A dispute form for one of the credit bureaus is dated 26 October 2015 (Answer). A credit score from another credit bureau is dated 30 November 2015 (Answer). A 22 December 2015 results of investigation addressed three SOR debts, 1.a, 1.f, and 1.j (Answer). The August 2016 credit reports from each of the three credit bureaus (AE D-F) provide little insight into any actions she may have taken immediately after her April 2014 interview. Finally, she acknowledged (Tr. 46-48, 52) that she had taken no action after her interview because she had to come up with the money to pay the debts which were hers (Tr. 54).

After the hearing, Applicant hired an attorney to pursue formal action against two of the credit bureaus (AE G). She filed suit against the credit bureau which provided the three credit reports used at hearing. On 1 February 2017, the credit bureau stated that it appeared that Applicant may have been the victim of identity theft, which contributed to disputed information in her credit files. The credit bureau attached a copy of her credit file, which Applicant did not provide in her post-hearing documents.

Applicant provided no evidence of financial or credit counseling, and did not provide a budget. She provided no work or character references, or any evidence of community involvement.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a

compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. In April 2014, confronted with many debts that she did not recognize during an interview with a Government investigator, she undertook no efforts to discover which of the debts were hers and which were not,⁵ with the possible exception of SOR 1.a, the fraudulent account. Her efforts to address the debts listed on her March 2014 credit report appear to have only begun after she received the SOR in October 2015.

Between duplicate accounts, fraudulent accounts, and unowned accounts, Applicant disposed of seven of the twenty allegations. The two accounts she admitted were not resolved until after she received the SOR. One judgment she denied (1.m), she did not even investigate and resolve until after her hearing. These accounts alone would be enough to establish the case for disqualification, even assuming that the remaining debts had been removed, and properly so, from her credit reports. But Applicant’s evidence does not establish that all the accounts have been removed, much less properly so.

Applicant only partially meets the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and have not demonstrably ended, so how can they be considered unlikely to recur.⁶ Even assuming that her initial financial problems were due to circumstances beyond her control, she cannot be said to be dealing with the debts responsibly, having undertaken little action until after she received the SOR.⁷ Further, Applicant has not received credit or financial counseling. The few debts she resolved were resolved after she received the SOR, and the majority of remaining debts have not been clearly resolved.⁸ Moreover, she did not provide the February 2017 updated credit file that might have documented the resolution of the

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations

⁶¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁷¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

⁸¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

remaining debts.⁹ Nevertheless, she successfully challenged several debts as either not hers or obtained by fraud.¹⁰

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.¹¹ Applicant's efforts to date might have constituted such a plan, but for the shortcomings of her documents. Moreover, the absence of work or character references precludes a "whole-person" analysis arguing for granting her clearance notwithstanding her financial issues. I conclude Guideline F against Applicant.

The Government failed to establish a case for disqualification under Guideline E. Applicant was unaware of the contents of her credit report until her April 2014 interview with a Government investigator. Her conduct does not constitute a deliberate omission or evasiveness inconsistent with the candor required of applicants.¹² Accordingly, I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b, f, n, p:	For Applicant
Subparagraphs c-e, g-m, o, q-t:	Against Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph a:	For Applicant

⁹¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

¹⁰ 20 (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 of the dispute or provides evidence of actions to resolve the issue;

¹¹ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

¹²¶ 16 (a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR.
Administrative Judge