



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



In the matter of:

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) ISCR Case No. 15-02027
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Applicant for Security Clearance

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel

For Applicant: *Pro se*

August 16, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on February 28, 2014. On November 4, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on November 30, 2015, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on January 29, 2016. Applicant responded to the FORM (Response) on February 11, 2016. Department Counsel had no objection, and the documents are entered into evidence. The case was assigned to me on March 15, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in all the Paragraphs of the SOR, with explanations.

Guideline F - Financial Considerations

Applicant is a 45-year-old "Account Manager," who has worked for a government contractor since January of 2008. (Item 3 at pages 5 and 13.) She attributes much her financial difficulties to her "now deceased ex-husband being diagnosed with cancer resulting in high medical expenses for his treatment." (Answer at page 1.)

1.a. and 1.t. Applicant admits that she is indebted to Creditor A for a past-due medical debt in the amount of about \$360. She successfully disputed the two allegations as being one and the same debt, but has also offered documentation showing it is still past due. (Response at page 2, and Response Item (RITEM) 2 at page 4.) This allegation is found against Applicant.

1.b. Applicant admits that she is indebted to Creditor B for a past-due medical debt in the amount of about \$148. She avers here, and reiterates through out her Response the following: "I do not understand that I am still responsible for the debt even though it does not show on my credit report." (Response at page 2.) The fact that a delinquent account does not appear on a credit report does not indicate it has been forgiven. The creditor may have written it off as a business loss, or sold it to another successor creditor at a discount. This does not mean that the creditor or successor creditor would not happily accept payment of the outstanding debt. She also offers documentation showing this debt is still past due vis-a-vis a successor creditor to this debt. (Response at page 2, and RItem 2 at page 4.) This allegation is found against Applicant.

1.c. and 1.f. Applicant admits that she is indebted to Creditor C for a past-due medical debt in the amount of about \$1,379. She successfully disputed the two allegations as being one and the same debt, but has also offered documentation showing it is still past due. (Response at page 2, and RItem 2 at page 3.) This allegation is found against Applicant.

1.d. Applicant admits that she is indebted to Creditor D for a past-due medical debt in the amount of about \$131. She avers that she "paid" this debt, but does not offer documentation in support of her averment. (Response at page 2.) However, Applicant does offer documentation showing this debt is still past due vis-a-vis a successor creditor to this debt. (Response at page 2, and RItem 2 at page 3.) This allegation is found against Applicant.

1.e. Applicant admits that she is indebted to Creditor E for a past-due debt in the amount of about \$1,740, and offers nothing further in this regard. (Response at page 2.) This allegation is found against Applicant.

1.f. This allegation has already been discussed, above.

1.g. and 1.o. Applicant admits that she is indebted to Creditor G for a past-due debt in the amount of about \$982. She successfully disputed the two allegations as being one and the same debt, but has also offered documentation showing it is still past due. (Response at page 3, and RItem 2 at page 3.) This allegation is found against Applicant.

1.h. Applicant admits that she is indebted to Creditor H for a past-due medical debt in the amount of about \$616, and offers nothing further in this regard. (Response at page 3.) This allegation is found against Applicant.

1.i. and 1.j. Applicant admits that she is indebted to Creditor I for a past-due debt in the amount of about \$431. She successfully disputed the two allegations as being one and the same debt, but has offered nothing further in this regard. (Response at page 3, and RItem 3.) This allegation is found against Applicant.

1.k. Applicant admits that she is indebted to Creditor K for a past-due debt in the amount of about \$392, and offers nothing further in this regard. (Response at page 3.) This allegation is found against Applicant.

1.l. Although Applicant initially admitted this \$274 medical debt, she has successfully disputed it, as evidenced by supporting documentation. (Response at page 3, and RItem 8.) This allegation is found for Applicant.

1.m. Although Applicant initially admitted this \$106 cell phone debt, she has paid it, as evidenced by supporting documentation. (Response at page 3, and RItem 7.) This allegation is found for Applicant.

1.n. Although Applicant initially admitted this \$76 medical debt, she has successfully disputed it, as evidenced by supporting documentation. (Response at page 3, and RItem 8.) This allegation is found for Applicant.

1.o. This allegation has already been discussed, above.

1.p. Although Applicant initially admitted this \$466 county debt, she has successfully disputed it, and it does not appear on the Government's most recent September 2015 credit report.. (Response at page 4.) This allegation is found for Applicant.

1.q. Applicant admits that she is indebted to Creditor Q for a past-due debt in the amount of about \$11,662, and offers nothing further in this regard. (Response at page 4.) This allegation is found against Applicant.

1.r. Applicant admits that she is indebted to Creditor R for a past-due medical debt in the amount of about \$2,918, and offers nothing further in this regard. (Response at page 4.) This allegation is found against Applicant.

1.s. Applicant admits that she is indebted to Creditor S for a past-due medical debt in the amount of about \$1,127, and offers nothing further in this regard. (Response at page 4.) This allegation is found against Applicant.

1.t. This allegation has already been discussed, above.

1.u. Applicant admits that she is indebted to Creditor U for a past-due debt in the amount of about \$275, and offers nothing further in this regard. (Response at page 4.) This allegation is found against Applicant.

1.v. Applicant admits that she is indebted to Creditor V for a past-due medical debt in the amount of about \$244, and offers nothing further in this regard. (Response at page 4.) This allegation is found against Applicant.

1.w. Although Applicant initially admitted this \$50 collection debt, she has successfully disputed it, and it does not appear on the Government's most recent September 2015 credit report.. (Response at page 4.) This allegation is found for Applicant.

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 useful 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. (AG Paragraph 2.) The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 relating to the guideline for Financial Considerations is set out in Paragraph 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 Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant has significant past-due debt, which she has not yet resolved. Both disqualifying conditions were established by the evidence.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant attributes her past-due debt, in part, to her former husband’s cancer, she has failed to act *“responsibly under the circumstances,”* as required by Subparagraph 20(b) with respect to her very significant past-due debts. Furthermore, Subparagraph 20(d) requires that *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has yet to credibly address 14 admitted past-due debts. Accordingly, Applicant has not met her burden of persuasion.

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 the circumstances. Under AG Paragraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Applicant has significant past-due indebtedness that she has yet to address. She is a mature individual who is accountable for her financial choices. No evidence was presented to support findings of rehabilitation, permanent behavioral changes, or diminished potential for pressure or duress. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from her Financial Considerations.

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.k.	Against Applicant
Subparagraphs 1.l.~1.n.	For Applicant
Subparagraph 1.o.	Against Applicant
Subparagraph 1.p.	For Applicant
Subparagraphs 1.q.~1.v.	Against Applicant
Subparagraph 1.w.	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 a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge