



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-02933
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

07/21/2016

Decision

HOGAN, Erin C., Administrative Judge:

On December 2, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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.

On January 2, 2016, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on January 21, 2016. Applicant received the FORM on February 3, 2016. She had 30 days to submit a response to the FORM. She did not respond to the FORM. On April 5, 2016, the case was forwarded to the Hearing Office and assigned to me on May 23, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her response to the SOR, Applicant admits all of the allegations in the SOR. (Item 1)

Applicant is an employee of a DOD contractor seeking to maintain her security clearance. She has worked for her current employer since October 2011. She is a high school graduate and has an associate's degree. She is married and has two children, a son, age 26, and a daughter, age 23. (Item 2)

On December 28, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In section 26, Financial Record – Delinquency Involving Routine Accounts of the e-QIP, Applicant indicated that she had a \$7,500 loan that has been delinquent since August 2005. She also listed a delinquent medical bill in the amount of \$340 that has been delinquent since January 2012. Applicant mentioned that she intended to pay that bill in January 2013. (Item 2)

A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$7,394 delinquent loan that was charged off in 2010 (SOR ¶ 1.a: Item 4 at 2; Item 5 at 14); a \$69 account placed for collection in 2011 (SOR ¶ 1.p: Item 4 at 3); a \$578 account placed for collection in 2012 (SOR ¶ 1.z: Item 5 at 4); a \$453 delinquent credit card account that was placed for collection in 2012 (SOR ¶ 1.bb: Item 5 at 9); a \$795 delinquent account that was placed for collection in 2012 (SOR ¶ 1.ff: Item 5 at 14); and 27 delinquent medical accounts that were placed for collection at various times between 2008 and 2012, a total approximate balance of \$10,887. (SOR ¶¶ 1.b-1.o, 1.q-1.y, 1.aa, 1.cc – 1.ee: Item 4; Item 5).

In her Response to the SOR Applicant states that she is an honest and hard-working patriot. She is willing to provide professional references upon request. She states that her finances do not reflect her character. She signed up with a law firm to resolve her delinquent debts. She would like to be considered for a security clearance. (Item 1) Applicant did not provide a copy of her agreement with the law firm and did not provide additional information as to how she incurred the delinquent accounts and what actions she intends to take to resolve her delinquent accounts. She did not submit a response to the FORM, which would have been another opportunity for Applicant to explain her financial situation.

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 when determining 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 as to 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 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 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 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial problems since about 2011. The SOR alleges 32 delinquent accounts with an approximate total of \$20,176. Applicant has a history of not being able to pay her bills.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving 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 pay 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 her finances in such a way as to meet her financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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;

AG ¶ 20(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;

AG ¶ 20(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;

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

AG ¶ 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.

I cannot apply AG ¶ 20(a) because Applicant's financial situation is ongoing because her delinquent accounts are not resolved. Applicant did not provide sufficient evidence to demonstrate that she was attempting to resolve delinquent accounts, most of which have been delinquent since 2011. Questions remain about her reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Of the 32 delinquent accounts, 27 accounts are medical bills. Applicant did not really explain how these bills were incurred. Circumstances beyond her control may have caused the medical bills. However, I cannot conclude Applicant acted responsibly under the circumstances, because she appears to have ignored her delinquent debts for years.

AG ¶ 20(c) does not apply. There is no evidence that Applicant attended financial counseling. In her response to the SOR, Applicant states that she hired a law firm to help her with her debts. She provided no documentation of her agreement with the law firm. She did not indicate what progress was being made towards resolving her delinquent debts. Applicant's financial problems are ongoing and uncertain.

AG ¶ 20(d) does not apply because Applicant did not provide sufficient evidence to indicate that she made a good-faith effort to resolve her delinquent accounts.

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. 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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances that would mitigate financial considerations security concerns. While Applicant indicated in her response to the SOR that she retained a law firm to assist her with her debts, she did not provide additional evidence about the law firm and what steps she is taking to resolve her delinquent debts.

The determination of an individual's eligibility for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating to the evidence presented. Under Applicant's current circumstances, the granting of a security clearance is not warranted. In the future, if Applicant establishes a track record of resolving her delinquent debts, she may demonstrate persuasive evidence of her security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant may be able to demonstrate a track record of resolving her financial obligations at some point in the future. At present, it is too soon to make this conclusion. The security concerns raised under financial considerations are not mitigated.

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.ff:	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.

ERIN C. HOGAN
Administrative Judge