



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



In the matter of:)
)
) ISCR Case: 15-03169
)
)
Applicant for Security Clearance)

Appearances

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

03/01/2017

Decision

WHITE, David M., Administrative Judge:

Applicant's October 2014 credit report showed old reports of two formerly delinquent joint credit card debts that were repaid from proceeds of her late husband's life insurance. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of Case

On October 1, 2014, Applicant submitted a security clearance application (SF-86). On December 1, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on December 31, 2015. She denied the two SOR allegations concerning delinquent debts, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On February 16, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on February 18, 2016, and received by her on March 2, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. She did not file any objection to the Government's FORM, submit additional material for consideration, or request additional time to respond within that 30-day period. DOHA assigned the case to me on January 13, 2017. Items 1 through 5 are admitted into evidence.

Findings of Fact

Applicant is 46 years old. Her husband died in September 2010. She has no children. She earned a bachelor's degree in 1992, and has worked for a major defense contractor, as a subcontract administrator, since January 2001. She has no prior Federal employment or military service, and has not previously held a security clearance. (Item 2.)

The SOR alleged two delinquent credit card debts, which totaled \$23,971. The debts became delinquent in January 2008, according to the October 15, 2014 full data credit report obtained by the Office of Personnel Management (OPM). (Item 5.) Applicant listed a number of formerly delinquent joint debts, which were incurred by her husband, on her SF-86. She explained that he had been unemployed for some time during the period leading up to his death, and used joint credit card accounts to purchase things without her knowledge. He had life insurance, and she used the proceeds of that policy to pay off all of those debts after his death. (Item 1; Item 2; Item 3; Item 4.)

The \$15,581 credit card debt alleged in SOR ¶ 1.a was reported as a charged-off account in August 2009. (Item 5 at 5.) In September 2009 it was transferred to a collection agency, which reported that the debt was paid in full during January 2011. (Item 5 at 6.) Applicant's October 2015 credit report confirms that this debt is no longer outstanding. (Item 4.)

The \$7,990 credit card debt owed to a collection agency, alleged in SOR ¶ 1.b, was reported by Equifax during January 2011 on the OPM full data credit report. (Item 5.) Applicant's October 2015 Equifax credit report shows no outstanding debt to that collection agency, and the only credit card account reported by the bank that issued the card in question shows that it was paid as agreed, and paid and closed. (Item 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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing 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 applicable guidelines in the context 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 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had two joint credit card accounts that her late husband used, without her knowledge, to accrue some delinquent debt before his death in 2010. No delinquent debt has been shown to be attributable to Applicant's conduct, and she used the proceeds from her husband's life insurance to resolve all of the debt he had previously incurred in their joint accounts. Applicant's most recent credit report reflects no delinquent debt, and she has been fully employed since 2001. The record evidence does not establish security concerns under either of these disqualifying conditions.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's alleged financial difficulties:

- (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

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

doubt on the individual's current reliability, trustworthiness, or good judgment;

(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;

(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;

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

(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.

Applicant's two allegedly delinquent debts were incurred by her former husband without her knowledge or participation. She learned of them after his death, and used the proceeds of his life insurance to fully resolve them. These facts establish clear and convincing mitigation of any resulting security concerns under the provisions of AG ¶¶ 20(a) through 20(d).

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 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.

According to 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who took prompt action to resolve the financial issues created by her late husband, which underlie the security concerns expressed in the SOR. The alleged delinquent debts arose in 2008 while her husband was unemployed. She fully resolved all of the financial issues he had created with the proceeds of his life insurance policy. The likelihood that similar problems will recur is minimal; and the potential for pressure, coercion, or duress is eliminated by resolution of all formerly outstanding debt. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She fully met her burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge