



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



In the matter of:

ISCR Case No. 15-04113

Applicant for Security Clearance

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

November 29, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on 12 debts, in a total exceeding \$56,000. Applicant resolved six debts, but failed to introduce documentation to show the remaining six delinquencies are being addressed or have been resolved. Eligibility for access to classified information is denied.

Statement of the Case

On December 18, 2012, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On December 8, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

On December 30, 2015, Applicant answered the SOR (Answer), and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on February 10, 2016. The Government's submission included Government Items (GE) 1 through 5. A complete copy of the file of relevant material (FORM) was received by Applicant on February 24, 2016. She was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant's response to the FORM, and any objections to GE 1 through GE 5, were due on March 25, 2016. Applicant submitted a set of documents, marked collectively as her Reply. Department Counsel had no objections to the undated Reply and it was admitted. The case was assigned to me on September 13, 2016.

Findings of Fact

Applicant is 64 years old. She has been employed by her current employer, a defense contractor, since September 2012. Applicant is a widow. She has two adult children. (GE 3.)

As listed in the SOR, Applicant was alleged to be delinquent on 12 debts, in a total exceeding \$56,000. Applicant admitted SOR allegations 1.e and 1.i. She denied SOR allegations 1.a through 1.d, 1.f through 1.h, and 1.j through 1.l. Her debts are identified in the credit reports entered into evidence. (Answer; GE 4; GE 5.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributes her financial delinquencies to her husband's 2009 diagnosis of terminal cancer. He was no longer able to work and Applicant was forced to leave her job to be his caregiver from November 2009 to 2011. It took over a year to get supplemental security income (SSI), and they became behind on bills. Her husband passed away in April 2011. Additionally, Applicant provides financial support for her daughter and four grandchildren. (GE 2; GE 3.)

Applicant was alleged to be indebted on a mortgage that was in foreclosure for a past due amount of approximately \$36,750 on a total loan of \$220,892, as stated in SOR subparagraph 1.a. The house was purchased prior to her husband's illness. Without his income, they were unable to afford the payments. In Applicant's Reply, she presented a credit report dated March 18, 2016, that showed this account with a zero balance. She explained that the bank accepted a "short sell" on the property instead of foreclosing on the home. This debt is resolved. (GE 4; GE 5; Reply.)

Applicant was alleged to be indebted on a delinquent auto loan that was charged off in the amount of \$13,418, as stated in SOR subparagraph 1.b. This debt was for a vehicle that Applicant's husband purchased prior to becoming ill. The vehicle was repossessed. Applicant indicated the dealer retained possession of the vehicle for resale, but she failed to produce evidence that the debt was fully resolved, and that there was no deficiency due. This debt is unresolved. (GE 2; GE 4; GE 5; Reply.)

Applicant was alleged to be indebted on a collection account in the amount of \$1,193, as stated in SOR subparagraph 1.c. Applicant produced a letter dated March 11, 2016, which documented that this debt has been removed by the creditor from Applicant's credit file. It is resolved. (Reply; GE 4; GE 5.)

Applicant was alleged to be indebted on a delinquent medical account in the amount of \$1,037, as stated in SOR subparagraph 1.d. Applicant denied this debt because she "was not at the doctor or had any medical treatment [in] March of 2015." However, she failed to produce of any formal dispute with regard to this debt, which was identified on her March 2015 credit report. It is unresolved. (GE 2; GE 5.)

Applicant was alleged to be indebted on a collection account in the amount of \$1,008, as stated in SOR subparagraph 1.e. Applicant produced a letter dated March 11, 2016, which documented that this debt has been removed by the creditor from Applicant's credit file. It is resolved. (Reply; GE 5.)

Applicant was alleged to be indebted on a collection account in the amount of \$157, as stated in SOR subparagraph 1.f. Applicant produced a letter dated March 11, 2016, which documented that this debt has been removed by the creditor from Applicant's credit file. It is resolved. (Reply; GE 4; GE 5.)

Applicant was alleged to be indebted on a delinquent medical account in the amount of \$58, as stated in SOR subparagraph 1.g. Applicant denied this debt, and claimed, "I do not owe any medical bills, I pay my copay each time [at] each visit." However, she failed to produce evidence to support her claim. This debt is unresolved. (Reply; GE 5.)

Applicant was alleged to be indebted on a judgment against her in the amount of \$1,049, as stated in SOR subparagraph 1.h. Department Counsel withdrew this allegation in the FORM, because Applicant presented sufficient evidence that it was resolved in her Answer. (GE 2.) It is resolved.

Applicant was alleged to be indebted on a collection account in the amount of \$1,018, as stated in SOR subparagraph 1.i. This debt was owed to a jeweler. It became delinquent in 2010. Applicant admitted this debt and claimed she would set up a payment agreement with this creditor. She failed to produce any evidence to show that she has made payments on this debt. It is unresolved. (GE 2.)

Applicant was alleged to be indebted on a collection account in the amount of \$326, as stated in SOR subparagraph 1.j. Applicant produced a letter from this creditor dated March 14, 2016, that stated, "the above account has a \$0 balance with an R9 rating." Further, a credit report entered into evidence with her Reply also indicated this debt had been charged off. This debt is not resolved, despite the zero balance. (Reply; GE 4; GE 5.)

Applicant was alleged to be indebted on a collection account in the amount of \$438, as stated in SOR subparagraph 1.k. Applicant produced a letter from this creditor dated March 11, 2016, that shows the debt is satisfied. It is resolved. (Reply; GE 4.)

Applicant was alleged to be indebted on a collection account in the amount of \$274, as stated in SOR subparagraph 1.l. This debt has been delinquent since 2012. Applicant denied this debt, but offered no explanation for her denial. She produced no documentation to show this debt is resolved. (GE 2; GE 4.)

Applicant provided no evidence establishing her current income or household budget. She offered no evidence of financial counseling, of savings or retirement investments, or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 EO 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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.

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 has a history of financial indebtedness documented by the credit reports in evidence, which substantiate all of the allegations. While she has resolved allegations 1.a, 1.c, 1.e, 1.f, 1.h, and 1.k, she remains indebted on subparagraphs 1.b, 1.d, 1.g, 1.i, 1.j, and 1.l. She has been unable or unwilling to address these remaining delinquencies. The evidence raises security concerns under both of these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s 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 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 financial problems are ongoing. Six of Applicant's 12 delinquent accounts remain unresolved. She has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant established that her delinquencies were caused by events that were beyond her control including her husband's illness, his death, and her unemployment. However, she failed to establish that she has acted responsibly. She has not demonstrated that she addressed her debts in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of financial counseling. Further, there are no clear indications that her financial problems are being resolved or are under control. Mitigation under AG ¶ 20(c) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's financial problems remain unresolved. While she was given the opportunity to document the status of her debts, she failed to produce evidence of actions on her remaining delinquent accounts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	For Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	For Applicant
Subparagraphs 1.f:	For Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	For Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraphs 1.j:	Against Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l:	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.

Jennifer I. Goldstein
Administrative Judge