



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



In the matter of:)
)
) ISCR Case No. 15-04368
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/07/2017

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on July 8, 2014. On December 14, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken under Executive Order (Ex Ord.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the adjudicative guidelines (AG), implemented by the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. ¶ 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant responded to the SOR on February 1, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on April 11, 2016.

A complete copy of the FORM was provided to Applicant, who had an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 18, 2016. She responded to the FORM and submitted a modified answer to the SOR and supporting documentation, marked as Applicant Exhibit (AE) A. The case was assigned to me on February 6, 2017. All exhibits are admitted into evidence without objection.

Findings of Fact

The SOR alleges Applicant has eight delinquent debts totaling approximately \$12,349, a foreclosure, and a Chapter 7 Bankruptcy discharged in 2004.³ Applicant admitted all the allegations, and provided explanations in her answer to the SOR and response to the FORM. Her admissions, explanations, and documentary evidence are incorporated in my findings of fact.

Applicant is 40 years old and has been employed by a defense contractor since 2012. She is unmarried and has one daughter, who is 16 years old. She completed high school in 1995, and is seeking to renew her security clearance. She was unemployed from October 2011 to September 2012.

Applicant filed Chapter 7 Bankruptcy in 2004, because she was unable to pay her debts while working in a low-paying job.⁴ (SOR ¶ 1.a) Her debts were discharged in 2004. Applicant and her boyfriend, her child's father, bought a house together in 2007. She had relied on his income for support until he left in 2008. Applicant fell behind on the mortgage loan in 2008, due to the loss of a job and secondary income,⁵ but continued to live in the home until 2010.⁶ It was finally foreclosed and sold in 2014. Applicant owes a deficiency balance of approximately \$35,000.⁷ (SOR ¶ 1.b)

In addition, she owes approximately \$8,887 on a personal loan that she stopped paying on in 2008. (SOR ¶ 1.f) The debt is now in a collection status and unresolved. She owes approximately \$801 to a satellite television provider that is unresolved because she did not return equipment when she left her home in 2010. (SOR ¶ 1.d) Likewise, she

³ The answer to the SOR states she filed Chapter 7 Bankruptcy in July 2014. This appears to be an error.

⁴ GE 4 and AE A. Applicant had several debts and a repossessed vehicle.

⁵ AE A.

⁶ GE 4.

⁷ GE 4.

continues to owe approximately \$235 on a cell phone provider debt that is in collection. (SOR ¶ 1.h) SOR debts ¶¶ 1.c, 1.e, 1.g, 1.i, and 1.j, have been paid and are resolved.⁸

Applicant did not provide documentary information about credit or budget counseling, performance evaluations or character. She indicated in her interview with an Office of Personnel Management investigator that her financial status is “tight” and that she generally lives from paycheck-to-paycheck.⁹

Law and 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 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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

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 security clearance decision.¹⁰ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹¹

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.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if

⁸ AE A contains documentation establishing resolution of these debts.

⁹ GE 4.

¹⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹¹ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

they must, on the side of denials.” Under *Egan*, Ex. Ord. 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.¹²

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Ex. Ord. 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* Ex. Ord. 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:

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 AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has longstanding delinquent debts that have not been resolved. She filed Chapter 7 bankruptcy in 2004, but incurred additional delinquent debts. Her home was foreclosed in 2014. She resolved five SOR debts, but four debts listed in the SOR have not been resolved. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b), as disqualifying conditions.

¹² *Egan*, 484 U.S. at 531.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following may be potentially applicable:

- (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 resolved SOR debts ¶¶ 1.c, 1.e, 1.g, 1.i, and 1.j. AG ¶ 20 (d) applies. The remaining debts, including the foreclosure, remain unresolved. Accruing additional delinquent debts, after obtaining a Chapter 7 discharge, raises concerns of financial irresponsibility, an unwillingness or inability to pay financial obligations, or both. Applicant has been gainfully employed, except for a one-year period from 2011 to 2012. Since 2012, she has been unable to satisfy the largest delinquent debts, nor has she shown efforts to negotiate settlements or seek assistance from a credit counselor. I have no information about her current financial status that would show similar issues are unlikely to recur in the future. Generally, Applicant's financial problems are not resolved or under control. Her past financial irresponsibility and her current unresolved delinquencies cast doubt on her reliability, trustworthiness, and good judgment.

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 all of the potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the absence of evidence of resolution of delinquent debts and an improved financial status leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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.b, 1.d, 1.f, and 1.h:	Against Applicant
Subparagraph 1.c, 1.e, 1.g, 1.i, and 1.j:	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.

Gregg A. Cervi
Administrative Judge