



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



In the matter of:

ISCR Case No. 15-06908

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

11/22/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant failed to provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On July 17, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 5) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on June 15, 2015. (Item 8) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On April 6, 2016, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in DOD on September 1, 2006.

Applicant answered the SOR on April 19, 2016. She admitted 15 of the 18 allegations of delinquent debts. She noted that SOR 1.e is a duplicate of the delinquent debt at SOR 1.d. She denied two allegations (SOR 1.g and 1.i) stating that she had no recollection of these two debts. She elected to have the matter decided on the written record. (Item 4)¹ Department Counsel submitted the Government's written case on June 20, 2016. Applicant received a complete file of relevant material (FORM) on July 7, 2016, and she was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a response to the FORM. (Item 12)² I was assigned the case on November 10, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 8) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and she could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the summary. In her response to the FORM, Applicant did not object to consideration of the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the case file, I make the following findings of fact. Applicant is a 30-year-old 2004 high school graduate. She attended two years of college from August 2004 until May 2006. She was also a government intern from February 2004 until December 2005. She was employed by a DOD contractor to work as an administrative assistant for various government agencies from September 2007 until the present. There are no periods of unemployment listed on the e-QIP. Applicant has never been married and has two children. She was granted eligibility for access to classified information in 2005 by the government agency where she interned. (Item 5, e-QIP, dated July 17, 2014)

¹ It was not clear from Applicant's response to the FORM that she still wanted her case considered on the record. Department Counsel asked for clarification from Applicant. Applicant responded that she did want the case considered on the record, and did not want the case converted into a hearing. (Item 13)

² The items attached to the FORM were incorrectly numbered. Item 11 was not identified on the FORM. I have renumbered the documents listed on the FORM as well as all items received from Applicant after the FORM was issued. Item 11 is the Court case information listed as Item 12 on the FORM. Item 12 is Applicant's response to the FORM. Item 13 is Applicant's answer to the question from Department Counsel if she still wanted to have her case decided on the record. Item 14 is supplemental information received from Applicant on November 14, 2016.

The SOR alleges, and credit reports (Item 6, dated March 9, 2016; Item 7, dated August 2, 2014; and Item 9, dated March 4, 2009) confirm the following delinquent debts for Applicant; a judgment for \$560 entered in 2009 (SOR 1.a); a car repossession with a balance of \$12,877 (SOR 1.b); a credit card debt charged off for \$443 (SOR 1.c); a judgment on a loan for \$6,834 (SOR 1.d); a charged off account for \$4,244 (SOR 1.e); a debt for apartment rent for \$1,991 (SOR 1.f); three medical debts in collection by the same creditor for \$610 (SOR 1.g), \$150 (SOR 1.h), and \$247 (SOR 1.i); a telephone bill in collection for \$924 (SOR 1.j); a car repossession debt charged off for \$6,730 (SOR 1.k); a telephone bill in collection for \$1,094 (SOR 1.l); and six traffic tickets in collection by a city for \$75 (SOR 1.m.), \$300 (SOR 1.n), \$300 (SOR 1.o), \$65 (SOR 1.p), \$250 (SOR 1.q), and \$125 (SOR 1.r). The amount of delinquent debt alleged in the SOR is approximately \$31,000. Applicant admitted to approximately \$26,000 of this debt. Similar debts were raised in 2009 when Applicant was last interviewed by a security investigator for eligibility for access to classified information. (Item 10)

Applicant's financial problems started in 2007 and were initially due to her using credit cards while she was in school and she did not realize the financial problems she was creating for herself. She would use her annual tax refund to pay some of her debts. She was living with her mother sharing expenses but her mother lost her job and could no longer share the expenses. Applicant became responsible for all of the family bills. She is attempting to get on top of her financial problems created when she was younger. (Item 4 at 2)

Applicant told the security investigator that she paid a number of her debts. She stated she is doing everything possible to resolve and cleanup her financial problems that she created for herself in the past. However, she did not present any evidence during the interview to verify her claim that she paid some of her delinquent debts. In response to the SOR, Applicant presented her latest credit report, dated April 19, 2016, to illustrate that her financial situation has improved. (Item 4) In addition, Applicant forwarded directly to me her latest credit report, dated November 4, 2016. Department Counsel had no objection to consideration of the credit report. This credit report does reveal that Applicant paid off two small accounts, and she made some payments on two other accounts. Some accounts were listed as closed, but those debts were not paid but written off by the creditor. (Item 14)

Applicant listed, in response to financial question 26 on her e-QIP (Item 5), only one debt, a delinquent personal loan used for her school expenses in collection for approximately \$5,000. This debt is probably SOR 1.e. This debt is not resolved.

Applicant noted that she and her mother lived together for a time and shared expenses. In approximately 2011, her mother lost her job and the family relied on Applicant's salary alone for income. Applicant decided to forego making payments on her car loan and the car was repossessed (SOR 1.b). She had a car earlier repossessed when she could not afford the payments after the birth of her first child (SOR 1.k). The car repossession debts have not been resolved.

Applicant admits co-signing a loan with her mother. She thought her mother was paying the loan with a payment plan. She did not present any information on her efforts to ensure that the loan was being repaid by her mother. The debt has not been resolved. (SOR 1.d).

Applicant disputes the debt at SOR 1.f for an apartment leasing company resulting from the condition of an apartment when she terminated the lease. She states that the apartment was not damaged. The leasing agent for the apartment complex changed after she left and the new agent has no information on the debt. She provided no documents concerning the filing of a dispute or any attempts to resolve the dispute with the leasing agent. This debt is not resolved.

Applicant claims that the debt at SOR 1.c has been paid, and the debt at SOR 1.h was removed from her credit report. The credit report at Item 14 shows that the debt at SOR 1.c is closed. However, the credit report states that the debt was not paid but written off. She presented no documents to verify that either debt was paid, rather than being removed from the credit report for other reasons.

Applicant denies the medical debts at SOR 1.g and 1.i because she does not have knowledge of the debts. She has a credit monitoring service watching her credit reports and neither debt is reported on her credit reports. She denies the medical debt for \$150 at SOR 1.h and claims that it has been removed from her credit report. The three medical debts are in collection by the same collection agency and the original creditor is identified on the credit reports. She did not present any information on her attempts to learn about the debts at SOR 1.g and 1.i. The credit report at Item 14 does show a \$150 medical debt as closed. However, the collection agency is different than the collection agency listed in the SOR. Applicant has not presented any information to establish that this is the debt that has been paid. She did not present sufficient evidence that the three medical debts have been resolved.

Applicant admits the debts at SOR 1.j and 1.l but claims they should not be reported on her credit reports since the debts have been resolved. She did not present any information to verify her attempts to learn about and resolve the debts. These debts have not been resolved.

Applicant admits the debt for unpaid parking fines at SOR 1.m to 1.r. She claims that she was not driving when some of the tickets were issued. Applicant did not know about some of the tickets because the requests for payment were sent to an old address. Applicant did not present any documents to show the efforts she took to learn about, pay, or otherwise resolve the tickets.

Applicant contacted a credit counseling company for assistance in paying her debts. However, she determined that she did not want to pay the fees to work with the credit counselors. (Item 8 at 8)

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

Analysis

Financial Considerations

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, thereby raising questions about an individual's reliability,

trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or 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 his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations. Unless there are extreme circumstances, failure to pay voluntarily incurred delinquent debts raises questions about a person's judgment and trustworthiness. One who does not pay his or her financial obligations in a timely and responsible fashion, may also show lack of responsibility in the proper handling of classified information. The person who is trustworthy in very small matter is also trustworthy in great matters. And the person who is dishonest in very small matters is dishonest in great ones.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant has a history of delinquent debts as documented in her credit reports, by her admissions to the OPM investigator, and her response to the allegations in the SOR. All of Applicant's SOR debts are listed on the credit reports at Items 6, 7, and 9. The information concerning the debts raised in the SOR coupled with the debts revealed in the earlier consideration for eligibility for access to classified information in 2009 shows a history of not meeting financial obligations. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The information raises both an inability and an unwillingness to pay delinquent debt. Once the Government has established delinquent debt, the Applicant has the responsibility to refute or mitigate those debts.

SOR allegations 1.d and 1.e allege that the same debt is delinquent. Since the debts are duplicates. I find for Applicant as to SOR 1.e.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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 has initiated a good-faith effort to repay the 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 for the dispute or provides evidence of actions to resolve the issue.

The mitigating condition AG ¶ 20(a) does not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. Applicant has been steadily employed since 2008, so she had income to enable her to resolve her delinquent debts.

The debts were not incurred by conditions beyond Applicant's control. Applicant voluntarily used credit cards to make purchases. While her mother's job loss is beyond Applicant's control, it was only a limited reason for accruing delinquent debt. Almost all of the debt was incurred by voluntarily use of credit cards. In addition, Applicant has not shown that she acted reasonably and responsibly to resolve her financial problems. She noted that some debts were paid or being paid but she has not provided adequate information to show the basis for her assertions of payment or actions taken to try to resolve the debts. Mitigating condition AG ¶ 20(b) does not apply.

Mitigating condition AG ¶20(c) does not apply. Applicant did not present any evidence that she received financial counseling. She claims to have spoken to a credit counseling firm, but she decided not to employ them because she did not want to spend the money for them to advise her.

Mitigating condition ¶20(d) does not apply. Applicant has not established a good-faith effort to pay her financial obligations. For a good-faith effort, there must be an ability to pay financial obligations, the desire to pay them, and evidence of a good-faith effort to pay or resolve the obligations. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling financial obligations is needed. Applicant must establish a meaningful track record of payment of financial obligations. A meaningful track record of payment can be established by evidence of actual payments or reduction of obligation through payment of debts. A promise to pay financial obligations is not a substitute for a track record of meeting obligations in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

While she claims to have made payments on her debts, she did not present evidence to verify and establish the payments. Applicant's credit report of April 19, 2016 (Item 4) does not show that her debts have been resolved by a meaningful track record of payment of the debts. Applicant's credit report of November 4, 2016, does show that Applicant may have made payments on some of her bills. However, the payments would not rise to the level of a meaningful track record of debt payment. (Item 14)

Applicant did not present any information on any disputes she filed concerning any of the debts. AG ¶20(e) does not apply

The evidence does not support responsible management of her finances. Applicant did not present any evidence to establish a meaningful track record of payments of her financial obligations. Her financial problems are not under control. She has not established that she contacted the creditors to resolve the debts. Based on Applicant's failure to verify the debts and make payment arrangements, it is clear that she has not been reasonable and responsible in regard to her finances. Her lack of reasonable and responsible action towards her finances is a strong indication that she may not protect and safeguard classified information. Applicant did not present sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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. Even though Applicant has been gainfully employed at a good-paying job since 2008, she did not provide sufficient credible documentary information to establish that she has taken reasonable and responsible action to resolve her financial problems. Applicant did not demonstrate appropriate management of her finances and a consistent record of action to resolve

financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. She has not established her suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial situation.

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.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraphs 1.f – 1.r: | 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 access to classified information. Eligibility for access to classified information is denied.

THOMAS M. CREAN
Administrative Judge