



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



In the matter of:

ISCR Case No. 15-08031

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

10/14/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not 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 March 5, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On February 8, 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 the DOD on September 1, 2006.

Applicant answered the SOR on February 19, 2016. She admitted six and denied one (SOR 1.b) allegation of delinquent debt with explanations. She elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on February 22, 2016. Applicant received a complete file of relevant material (FORM) on March 17, 2016, and she was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM. I was assigned the case on September 27, 2016.

Findings of Fact

After a thorough review of the case file. I make the following findings of fact. Applicant is 54 years old and a high school graduate. She was first married in September 1985 and divorced in February 1986. She married again in October 1990. Her husband passed away in October 2014. She has two children. She was employed as a trainer/supervisor for a supply company from January 1999 until July 2006. She was unemployed from July 2006 until August 2007. There is no indication in the file if she received unemployment compensation during this period of unemployment. She started working for her present defense contractor employer in August 2007. She reported on her e-QIP that at one time while working for the defense contractor she was eligible for access to classified information at the confidential level. (Item 2, e-QIP, dated March 5, 2015)

Applicant listed her delinquent debts on the e-QIP. The SOR alleged and credit reports (Item 3, dated September 8, 2007 and April 4, 2015; Item 4, dated October 16, 2015; and item 5, dated January 14, 2016 and March 16, 2016) confirm the following delinquent debts for Applicant: a debt for a credit card placed for collection for \$2,051 (SOR 1.a); a delinquent medical account in collection for \$676 (SOR 1.b); a department store account charged off for \$8,515 (SOR 1.c); a department store account charged off for \$452 (SOR 1.d); a credit card account in collection for \$9,671 (SOR 1.e); a credit card account charged off for \$5,823 (SOR 1.f); and a credit card account charged off for \$3,584 (SOR 1.g). The amount of the delinquent debt listed in the SOR is approximately \$30,000. All of the debts are listed on the credit reports.

In her response to the SOR, Applicant noted that she and her husband had good credit and paid their bills until he was required to retire because of his health. The only income was her salary. She and her husband had a difficult time being current with their finances on only her income. She lost over two months of work without pay because of her own illness and other issues. When she was not working, they had no income. Her husband died in 2014. Applicant admitted to all of the SOR debts except for the medical debt for \$676 at SOR 1.b. She professed to making payments on the credit card accounts at SOR 1.a and 1.e but provided no documents to verify the payments. She received an offer for a payment plan on the store credit card at SOR 1.d, but she has not accepted or made any payments towards the debt. She has not presented any documents to verify that she made payments on any of the debts. (Item 1, SOR response, dated February 19, 2016)

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or careless in 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 her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay 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 finances in such a way as to meet financial obligations.

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 and her response to the allegations in the SOR. All of Applicant's SOR debts are listed on the credit reports at Items 3, 4 and 5. 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.

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; and

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

The mitigating conditions do not apply. Applicant's debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely. She is a widow who had difficulties paying the family debts after her husband became ill and had to retire. She was the sole source of income. She also had some periods when she was ill, could not work, and not receiving income. While these conditions were potentially beyond her control, she has not acted responsibly. She was aware that her financial problems were a security concern when she completed her e-QIP in March 2015. She has been gainfully employed since August 2007. She has not presented any evidence that she made payments on any of her debts. She has not presented information to verify actions taken to learn about, resolve, and pay her delinquent debts. The evidence does not support responsible management of her finances and her financial problems are not under control. Based on Applicant's failure to establish she made arrangements or payments on her debts, 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.

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. I considered that Applicant is a widow since 2014. Even though Applicant has been gainfully employed since August 2007, 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.g:	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