



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-08189
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

05/24/2017

Decision

HOGAN, Erin C., Administrative Judge:

On May 11, 2016, the Department of Defense (DOD) 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 within the DOD after September 1, 2006.

On June 2, 2016, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on July 1, 2016. Applicant received the FORM on July 13, 2016. She had 30 days from the receipt of the FORM to submit matters in response to the FORM. Applicant did not submit a response to the FORM. The case was forwarded to the Hearing Office on September 13, 2016, and assigned to me on May 19, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her response to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. She denies the allegations in SOR ¶¶ 1.d, and 1.f – 1.j. (Item 4)

Applicant is an employee of a DOD contractor seeking a security clearance. She has worked for her current employer since May 2015. She is a high school graduate and has some college credit. She is divorced and has two daughters. (Item 5)

On June 3, 2013, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). (Item 2) In “Section 26, Financial Record – Delinquency Involving Routine Accounts,” Applicant indicated that she had a delinquent car loan that was paid off. (Item 3, section 26)

A subsequent background investigation revealed the following delinquent accounts: a \$15,712 charged-off automobile loan (SOR ¶ 1.a: Item 6 at 2; Item 7 at 4); a \$5,073 car loan that was charged off in November 2009 (SOR ¶ 1.b: Item 7 at 4); a \$942 account that was charged off in March 2014 (SOR ¶ 1.c: Item 6 at 2; Item 7 at 4); a \$305 account placed for collection in June 2011 (SOR ¶ 1.d: Item 7 at 4); and a \$316 cable television account placed for collection in December 2014 (SOR ¶ 1.e: Item 6 at 1; Item 7 at 5).

Additional delinquent accounts include: an unidentified creditor account in the amount of \$303 (SOR ¶ 1.f: Item 7 at 6); an unidentified creditor account in the amount of \$245 (SOR ¶ 1.g: Item 7 at 6); an unidentified creditor medical account in the amount of \$210 (SOR ¶ 1.h: Item 6 at 1; Item 7 at 6); a \$179 account placed for collection in March 2012 (SOR ¶ 1.i: Item 7 at 6); and a \$38 collection account. (SOR ¶ 1.j: Item 7 at 6).

In her Response to the SOR, Applicant states that she has been a single mother for over 10 years raising two daughters. On occasion, her financial situation was such that she did not pay some bills. She believes her financial struggles do not raise questions about her reliability, trustworthiness, or ability to protect classified information. She claims that most of her bills are either paid or current. Applicant was a Navy wife for seven years. Her father and brother also work for the same DOD contractor. They are loyal to both their company and their country. Her company provides financial stability for her family. (Item 4 at 2-3).

Applicant summarizes the status of the debts as:

SOR ¶ 1.a: \$15,712 charged-off automobile loan: Applicant admits to this debt, but claims it is her current car loan and it is in current status. She provided no documentation verifying this. The most recent credit report in the file, dated April 7, 2016, lists the account as being charged off with a date of last payment of February 2016. (Item 4 at 1; Item 6 at 2)

SOR ¶ 1.b: \$5,073 charged-off automobile loan: Applicant admits to this debt. This was a voluntary repossession. Applicant claims the creditor has never contacted her about paying the outstanding balance. (Item 4 at 1)

SOR ¶ 1.c: \$942 charged-off account: Applicant claims she paid this debt. The April 2016 credit report indicates the account was settled for less than the full balance and is paid. (Item 4 at 1; Item 6 at 2)

SOR ¶ 1.d: \$305 account placed for collection: Applicant admits that this is a medical bill. She is attempting to set up a payment plan for it. She did not provide documentation of the payment plan in her response to the SOR. She did not take submit a response to the FORM. (Item 4 at 1)

SOR ¶ 1.e: \$316 cable television account placed for collection: Applicant admits this debt. She says it is a bill for unreturned equipment. She stated that they were adjusting the amount. The April 2016 credit report lists the bill as unpaid. (Item 4 at 2; Item 6 at 1)

SOR ¶ 1.f and 1.g: Both debts alleged unidentified creditors with respective balances of \$303 and \$245: Applicant denies these debts. She is unable to identify the debt alleged in SOR ¶ 1.f and claims the \$245 debt was paid off. Neither debt shows up on the April 2016 credit report. Both of these allegations are found for Applicant because of insufficient pleading. (Item 4 at 2)

SOR ¶ 1.h: \$210 medical account: Applicant denied the debt claiming the bill was paid. The medical bill is listed as being paid on the April 2016 credit report. (Item 4 at 2; Item 6 at 1)

SOR ¶ 1.i: \$179 collection account: Applicant denies this debt. She indicates that she contacted the law office that was collecting this debt and they confirmed she did not have any open collection accounts. She did not provide proof of this assertion, such as a statement from the law office that she has no open accounts and the debt is paid. She did not respond to the FORM. (Item 4 at 2)

SOR ¶ 1.j: \$38 debt placed for collection: Applicant denies this debt because she does not recall purchasing anything from the creditor. She did not provide evidence of any attempt to dispute this debt. (Item 4 at 2)

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 when determining 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 as to 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 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 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant has eight delinquent debts, owing approximately \$22,775. Of that amount, \$20,785 involved two delinquent automobile loans. The remaining \$1,990 consisted of consumer debts and two medical bills. Applicant has a history of financial irresponsibility.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving 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 pay 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 her finances in such a way as to meet her financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) does not apply. Applicant's financial problems continue. Her two largest debts, the car loans, remain unresolved. Most of the remaining debts have relatively small balances, but Applicant has not provided documentation of her efforts to resolve or dispute these delinquent accounts. Questions about Applicant's reliability, trustworthiness, and good judgment remain.

AG ¶ 20(b) partially applies because Applicant struggled as a single mother to raise her two daughters. However, there is no evidence of additional conditions beyond her control that contributed to her financial situation. I cannot conclude that Applicant acted responsibly under the circumstances because Applicant did not provide proof that she was attempting to resolve her delinquent accounts. Most of the accounts had balances of \$300 or less and should have been easy to resolve over a period of time.

AG ¶ 20(c) does not apply. There is no evidence that Applicant attended financial counseling. She did not provide information about her current financial status. Applicant's financial problems are unlikely to be resolved in the near future.

AG ¶ 20(d) partially applies because Applicant resolved the debts alleged in SOR ¶¶ 1.c and 1.h. She did not demonstrate that she was making a good-faith effort to resolve her remaining delinquent accounts. For this reason AG ¶ 20(d) is given less weight.

AG ¶ 20(e) possibly applied to the debts Applicant denied in SOR ¶¶ 1.i and 1.j, but she did not provide evidence of actions that she took to resolve the issue, such as disputing the entries on her credit reports, or contacting the creditor directly to dispute the debt.

SOR ¶¶ 1.f and 1.g were found for Applicant because of insufficient pleading. Although account numbers were listed, the pleadings did not list the name of the creditor. Applicant was not given sufficient notice to respond to the allegations.

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 the 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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, she failed to provide sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances that would mitigate financial considerations security concerns. While the April 2016 credit report indicates Applicant resolved the debts alleged in SOR ¶¶ 1.c and 1.h, she failed to provide evidence of the steps that she is taking to resolve the remaining debts alleged in the SOR. She also did not provide information on her current financial situation, such as her monthly income, expenses, and debt payments. It is unknown whether Applicant has sufficient income to meet her financial obligations.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant may be able to demonstrate a track record of resolving her financial obligations at some point in the future. At present, it is too soon to make this conclusion. The security concerns raised under financial considerations are not mitigated.

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.e, 1.i, 1.j:	Against Applicant
Subparagraphs 1.c, 1.f – 1.h:	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.

ERIN C. HOGAN
Administrative Judge