



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



In the matter of:)
)
) ISCR Case No. 15-06333
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2018

Decision

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

On December 10, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 4) A security investigator from the Office of Personnel Management (OPM) interviewed Applicant on March 23, 2015. (Item 8, Personal Subject Interview (PSI)) After reviewing the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On May 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 the DOD on September 1, 2006.

Applicant answered the SOR on February 5, 2017. She admitted the eight allegations of financial security concern, and requested that the matter be decided on the written record. (Item 1) Department Counsel submitted the Government's written case on August 10, 2017. (Item 8) Applicant received a complete file of relevant material (FORM) on September 5, 2017, and she was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a response to the FORM. I was assigned the case on December 12, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (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 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 PSI summary. Applicant did not respond to the FORM, so she did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I considered information in the PSI in my decision.

Findings of Fact

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 41 years old. She graduated from high school in June 1994. She married in September 1999, separated in September 2012, and divorced in September 2014. There are two children from the marriage.

Applicant has been employed as an emergency service dispatch for a defense contractor since December 2014. Prior to that, she had temporary employment from September to December 2014. She was unemployed from March to September 2014 after working as a dispatcher for a service company from July 2013 until March 2014. She was unemployed from July 2012 until July 2013, after being terminated for poor

performance as a fire dispatcher which she held from April 2001 until July 2012. (Item 4, e-QIP, dated December 10, 2014; Item 8, PSI, dated March 23, 2015)

Applicant listed delinquent debts on her e-QIP. The SOR alleges, and Applicant's PSI, her response to the SOR, and credit reports (Item 5, dated December 18, 2014; Item 6, dated March 23, 2016; Item 7, dated June 8, 2017) confirm the following delinquent debts in collection: a credit card for \$8,748 (SOR 1.a); a utility debt for \$171 (SOR 1.b); a credit card for \$6,709 (SOR 1.c); for \$555 on a telephone bill (SOR 1.d); a credit card for \$3,228 (SOR 1.e); a credit card for \$1,105 (SOR 1.f); a credit union account for \$4,692 (SOR 1.g); and a department store account for \$541 (SOR 1.h). The total amount of the SOR listed delinquent debt is approximately \$26,000. (Item 4, e-QIP, dated December 10, 2014; Item 8, PSI, dated March 23, 2015)

Applicant and her husband's divorce decree directed that the husband pay \$25,000 to Applicant by October 2014 to help pay debts incurred during the marriage. Her husband has not paid Applicant the funds as directed by the divorce decree. He also has not paid child support as ordered. As of February 2017, he is over \$16,644 in arrears. (Item 3, Response to SOR, Court and Child Support Documents, submitted on July 7, 2017).

Applicant provided documents showing that some debts that arose during the marriage were resolved. The utility debt at SOR 1.b was paid in July 2014, the cell phone debt at SOR 1.d was settled and paid in December 2013, and the credit card debt in collection at SOR 1.e was paid in January 2017. (Item 3, Response to SOR)

In her response to the SOR, Applicant claims that the remaining marital debts at SOR 1.a, 1.c, 1.g, and 1.h have been removed from her credit report. She did not present evidence of any actions or documents to show that she paid or otherwise resolved the debts. She claimed that the remaining marital debt at SOR 1.f was to be paid and resolved within 30 days of her SOR response. She did not present documents to show payment or resolution of this debt. Applicant stated that her former husband has not provided her any information or documents on the actions, if any, he may have taken to pay or resolve the debts. (Item 3, Response to SOR)

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(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.

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 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 or sensitive information. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18).

A person’s relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet 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.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Credit reports confirm Applicant's SOR delinquent debts. This information is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability to satisfy debts, and
- (c) a history of not meeting financial obligations.

Once the Government has established adverse financial issues, the Applicant has the responsibility to refute or mitigate the issues. I considered the information and documents Applicant provided as mitigation in response to the SOR. The available evidence presented by Applicant shows the debts at SOR 1.b, 1.d, and 1.e have been paid and resolved. She presented evidence that shows that the debts at SOR 1.a, 1.c, 1.g., and 1.h. have been removed from the credit reports. Applicant claims that she will pay the debt at SOR 1.f. Applicant's failure to pay or resolve all of her debts shows an inability and history of not meeting financial obligations. Applicant's evidence raises 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions do not fully apply based on the insufficient evidence provided by Applicant and contained in the case file. Applicant has resolved some of her debts, but she has not resolved or paid all of her debts. The unresolved debts are numerous and recent, and amount to over 60% of the SOR debts. Applicant did not provide information concerning financial counseling or participation in debt consolidation programs.

Applicant did not establish a good-faith effort to resolve all of her debts. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must the plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given her circumstances. Applicant must establish that she has a reasonable plan to resolve financial problems, and that she has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant did not present evidence of debt payments or resolution of four of the debts but claims that they were removed from her credit reports. She claims one debt will be paid. Applicant had periods of unemployment, she has been gainfully employed for most of the recent 17 years. Her husband has not made all of the payments in accordance with the divorce decree he was required to make to her. However, she appears to have the means to pay and resolve her debts. She has not acted responsibly because she has not developed plans to pay her outstanding delinquent debts. She did not provide documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is no clear evidence that her debt problems have been resolved, so her finances are not under control. She appears to rely on the fact that the debts are no longer being reported on her credit reports to show that the debts have been resolved.

Debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. Security clearance decisions are not controlled or limited by statutes of limitation. The reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigation value. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. There is no clear evidence that Applicant's debt problems have been resolved, so her finances are not under control. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his debts.

The ability to resolve her financial problems were within Applicant's control. She did not present a plan to resolve her financial problems or show any efforts to pay or resolve the majority of her delinquent debts. Her lack of reasonable and responsible actions towards her finances is a strong indication that she will not protect and

safeguard classified or sensitive information. She did not present information to show a good-faith effort to resolve his debts, and she has not presented sufficient information to mitigate financial security concerns.

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(d):

(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 common-sense 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. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, she failed to supplement the record with relevant and material facts regarding her financial circumstances, adequately articulate her positions, and provide facts to mitigate the financial security concerns. In short, the file contains insufficient evidence to establish that she made adequate efforts to pay, settle, compromise, dispute, or otherwise resolve her delinquent accounts. The record does not show corroborating or substantiating documents and details to explain her finances. Applicant did not establish that she appropriately managed her finances. The lack of action by Applicant to resolve financial issues, are firm indications that she may not adequately safeguard classified information. 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 failed to mitigate 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d – 1.e:	For Applicant
Subparagraphs 1.f - 1.h:	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