



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 16-03909

Appearances

For Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2017

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. She has not mitigated concerns raised by her unresolved delinquent debt. Clearance is denied.

Statement of the Case

On April 11, 2017, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant a security clearance.

Applicant timely answered the SOR and requested an administrative determination. On June 26, 2017, Department Counsel sent Applicant the Government's written case, known as a file of relevant material (FORM), which contained six Items. Applicant received the FORM on August 23, 2017. Applicant did not respond to the FORM.

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant is 34 years old and has been employed by a Federal contractor since 2015. (Item 2) She attended college for a short time in 2010-2011, but did not obtain a degree. As of 2013, she divorced and has three children. In 2015, she was discharged from the U.S. Air Force for medical reasons after serving more than ten years of active duty. She wrote "other than honorable" on her SF-86, but disputed that during an interview. (Item 3). She admits and her credit report shows 14 collection accounts and a judgment for a total of about \$20,000. (Items 4 through 6) Although Applicant denied or disputed five allegations on the SOR, she provided no reason. Applicant has not provided proof of satisfaction of the judgment, nor payments toward her collection accounts. She held a security clearance while in the military. Applicant completed her security clearance application in October 2015, disclosing that she had financial difficulties. (Item 2)

Applicant's explanation on her security clearance application for her financial difficulties was a recent divorce. She provided no details except, that she needed to take better care of her finances. During her 2016 background interview, she noted that she was financially irresponsible and was overspending. She intends to pay her debts and stated that she will work with creditors. She also stated that since 2015, she has been working with a credit repair service, but provided no documentation to substantiate her claim. Applicant provided no documentary evidence to support any payments or approved payment plans to address or resolve her delinquent debts. The record provides no information concerning her financial status, counseling, or character information.

Applicant's current financial status is not known, as she provided no information. She referred to a recent divorce, but provided no nexus to the delinquent accounts that occurred before the divorce or how the divorce may have affected her finances. She did not report any financial counseling or present a budget. She intends to pay the delinquent debts, but she did not have a definite plan. (Item 3) She did not respond to the FORM to supplement the record.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Financial Considerations

Applicant's finances remain a source of concern. 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.² Applicant's admissions and the credit reports establish the Government's *prima facie* case that Applicant has a history of not meeting her financial obligations, and that she has an inability to do so.³ Applicant presented no evidence to extenuate or mitigate the concerns about her plans to resolve the issues by working with a collection company. She chose not to file for bankruptcy. A promise to pay in the future is not enough to mitigate the financial concerns. Applicant's financial problems are ongoing and were perhaps caused by events beyond her control, but she has not shown that she acted responsibly. Although Applicant has expressed a desire to repay her creditors, the alleged delinquent accounts remain unresolved and Applicant did not present a plan for resolving them.⁴

After a review of the record and a consideration of the whole-person factors at AG ¶ 2(d), I conclude that Applicant's financial problems render her unsuitable for access to classified information at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to reapply for national security eligibility in the future. The award of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, she may present persuasive evidence of financial rehabilitation and reform in the future.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a-1.n:	Against Applicant

² AG ¶ (18).

³ AG ¶¶ 19(a),(c).

⁴ AG ¶¶ 20(b), (c), (d), and (e) do not apply.

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge