



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



In the matter of:)
)
) ISCR Case No. 17-02297
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes Esq., Department Counsel
For Applicant: *Pro se*

03/16/2018

Decision

CREAN, Thomas M., Administrative Judge:

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

Statement of the Case

On May 19, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on April 17, 2017. (Item 3, Personal Subject Interview (PSI)) 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 September 6, 2017, DOD issued a Statement of Reasons (SOR) to Applicant alleging delinquent debts of security concerns under Guideline F, financial considerations. (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 June 8, 2017.

Applicant answered the SOR on October 2, 2017, admitted two and denied five allegations of delinquent debt with explanation. She requested a decision based on the written record. (Item 1) Department Counsel submitted the Government's written case on October 31, 2017. (Item 6) Applicant received a complete file of relevant material (FORM) on November 9, 2017. 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. The case was assigned to me on March 9, 2018.

Procedural Issue

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 3) 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 the PSI. Since she did not raise any objection to consideration of the PSI, I will consider 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 39 years old. She graduated from high school in May 2007, and attended technical school receiving a certificate in October 2014. Applicant has been employed as a technician for a defense contractor since February 2016. Prior to that employment, Applicant held various jobs since she moved with her military husband or left for a better position. She worked as an office manager, a human resource manager, or accounts manager. She reported unemployment from May to September 2007, and March to May 2015. She first married in July 1997 and divorced in January 2008. She married her present husband in April 2008. She has two biological and three step-children. (Item 2, e-QIP, dated May 19, 2016; Item 3, PSI, dated April 17, 2017)

The SOR alleges and credit reports (Item 4, dated June 28, 2016; Item 5, dated June 12, 2017) confirm the following delinquent debts for Applicant: a student loan in collection for \$22,703 (SOR 1.a); a loan past due for \$7,754 on a balance of \$8,423 (SOR 1.b); a utility bill charged off for \$421 (SOR 1.c); another utility debt in collection for \$360 (SOR 1.d); a utility bill for \$125 charged off for the same utility company listed in SOR 1.c (SOR 1.e); a delinquent medical debt of \$30 (SOR 1.f); and a television service debt in collection for \$541 (SOR 1.g) The total amount of the delinquent debt is approximately \$32,000. The majority of the debt is the student loan at SOR 1.a.

In her e-QIP, Applicant attributes most of her debt to her and her husband being laid off at the same time, and her missing work because of surgery. She reported that she is trying to establish payment plans. In the PSI, Applicant notes that she could not recall the specifics of the student loan. However, she could not afford the payments and fell behind on the debt. She indicated she would make payment arrangement with the creditor. Applicant did not provide information to verify any contacts with the creditor or payment arrangements.

The personal loan at SOR 1.b was to repair a pool damaged in a storm. Applicant could not make the payments after she and her husband were laid on the same day. In the e-QIP, Applicant noted that in May 2016, she entered a new payment plan starting of \$189 a month. In her response to the SOR, Applicant provided a document to verify the payment plan and establish that the payments are current. The debt is resolved.

Applicant reported that she did not recall the specifics of the utility debts at SOR 1.c, 1.d, and 1.e. She indicated that she could not afford to pay the bills and fell behind on payments. She would contact the creditors and make payment arrangements. In her response to the SOR, Applicant reported that she has no record of service from either utility company. She and her husband lived in military housing for some time and did not have a utility bill. She did not provide information on contacts with the creditors, attempts to enter payment plans, or payment of the debts.

In her response to the SOR, Applicant noted that she was paying the medical debt that day. She did not provide any information or documents to reflect that she paid the debt. As for the debt for televisions cable service, Applicant noted that the debt was generated by a service box that had not been returned. Applicant indicated she returned the box. However, she did not provide any information to show contact with the television service company concerning the return of the box or payment of the debt.

Applicant was advised in the FORM that she needed to provide documents to verify her payment of any debts or contact with creditors. Applicant provided documents and information on only one debt to show payment of her debts or plans to resolve the debts.

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 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 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.

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 and sensitive 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. (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 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 the 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.

Applicant's failure to pay debts shows an inability and history of not meeting her financial obligations. Once the Government has established adverse financial issues, the Applicant has the responsibility to refute or mitigate the issue. I considered the information and documents Applicant provided as mitigation in response to the SOR and FORM. The available evidence presented by Applicant does not show that she has resolved or is resolving almost all of her delinquent 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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The mitigating conditions do not apply. The information in the case file shows that Applicant has been gainfully employed since November 2004, except for two short periods of unemployment. Regular employment for almost 14 years appears to provide her the income and ability to pay her financial obligations.

Applicant did not provide information on her present finances or salary. She claimed that she would contact her creditors to establish payment plans. Except for one creditor, she did not present information on contacts with creditors or efforts to establish payment plans. Her lack of action results in her debts being numerous, ongoing, and recent. Her debts were not incurred under circumstances making recurrence unlikely. Applicant presented no evidence that she received financial counseling.

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. All that is required is that Applicant act responsibly given her financial 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 meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments. 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. Except for one debt, Applicant did not present evidence of debt payments.

Applicant did not provide sufficient details about what she plans to do to address the debts alleged in the SOR. 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 debt resolution. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving her debts. There is insufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. Her lack of reasonable and responsible actions towards her finances is a strong indication that she will not protect and safeguard classified information. Applicant failed 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. Applicant did not provide sufficient credible documentary information to establish that she took or plans to take reasonable and responsible action to resolve most of her financial obligations. Applicant did not demonstrate appropriate management of her finances and did not show a record of action to resolve financial issues. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, she must sufficiently supplement the record with relevant and material facts regarding her finances, adequately articulate her actions and positions, and provide facts to mitigate the security concerns. In short, the file as a whole does not contain sufficient information to mitigate financial security concerns.

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. 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
Subparagraphs 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c through 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