



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 14-03414
)
)
 Applicant for Security Clearance)

Appearances

For Government: David S. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

08/17/2015

Decision

HOGAN, Erin C., Administrative Judge:

On August 5, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations. 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on August 13, 2014, and requested that her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on April 23, 2015. The FORM was forwarded to Applicant on May 29, 2015. Applicant received the FORM on June 4, 2015. She had 30 days to submit a response to the FORM. She timely submitted matters in response to the FORM consisting of 12 pages. Her response to the FORM is admitted as Item 6. On July 2, 2015, the FORM was forwarded to the hearing office and was assigned to me on July 14, 2015.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.a -1.c, 1.e, 1.g – 1.k and denies the allegations in SOR ¶¶ 1.d, 1.f, and 1.l – 1.s. (Item 2 at 2-3)

Applicant is a 62-year-old employed by a Department of Defense contractor seeking to maintain a security clearance. Applicant has been employed with the company since January 2013. She has a high school diploma and obtained an A plus computer certification. She is married and has two adult children. (Item 2)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on February 6, 2013. (Item 2) A subsequent background investigation revealed that Applicant had 16 delinquent debts, a total approximate balance of \$80,839. Of that amount, \$54,863 is owed for state taxes (\$22,125, SOR ¶¶ 1.a and 1.b) and federal taxes (\$38,738, SOR ¶ 1.c). (Item 4; Item 5)

In her response to the SOR, Appellant states that she has been working diligently to clear up her credit report. She has been a member of a debt relief firm since February 2013. She has been a member of a tax relief organization since March 2014. She mentions that she encountered medical hardship, which resulted in several unpaid medical bills. She claims all other delinquent inactive accounts are either very old or were settled for less than the amount owed. They remain listed on her credit report for seven years. (Item 2)

On March 27, 2013, Applicant retained a debt relief organization to settle her delinquent accounts. She terminated the relationship on July 15, 2014. When the agreement was active, Applicant was to refer all calls from creditors to the debt relief organization. (Item 2 at 7-11) There is no information in the record indicating whether the debt relief organization settled any of Applicant's debts. After terminating the contract with the debt relief firm, Applicant attempted to resolve the delinquent debts herself.

In March 2014, Applicant and her husband retained the tax relief organization to assist with tax issues. A private tax consultant filed their taxes for the years in question. The consultant made mistakes, which resulted in her and her husband being audited. They incurred a substantial tax bill. Applicant left the filing of taxes to her husband and admits she should have been more proactive in monitoring the situation. They were in a repayment program, but could not make the payments after her husband was laid off in 2008. When he found other employment, his salary was reduced from \$125,000 a year to \$60,000 a year. They were unable to maintain the payments. (Item 2)

In response to the FORM, Applicant indicates that in most cases she is actively making monthly payments to settle her accounts. She states most of her accounts are

beyond the seven year timeframe and should be deleted from her credit report. Applicant states that she has excellent character, ethics, and she has never been in trouble with the law. She sent in letters to the three credit reporting agencies to dispute the debts that she contends are inaccurate or should not be listed because they are more than seven years old. She did not specify which debts are more than seven years old.

Applicant's tax issues have not been resolved. She and her husband paid the tax relief organization \$11,000 to assist with offering a settlement. The Internal Revenue Service (IRS) offered to settle the matter with \$3,000 monthly payments. Applicant and her husband could not afford the \$3,000 monthly payment so they did not enter into a settlement agreement with the IRS. She is now attempting to negotiate a settlement with the IRS on her own. She is diligently working to resolve all financial concerns. (Item 6 at 1; Item 2 at 12-21).

The current status of the debts at the close of the record are as follows:

SOR ¶¶ 1.a and 1.b: \$9,243 state tax lien entered against Applicant in February 2012, and \$12,882 state tax lien entered against Applicant in October 2012. (Item 5 at 2) In her response to the SOR, Applicant obtained the services of a tax relief organization to submit an offer in compromise for the two state tax liens. She did not mention whether the offer in compromise was successful in her response to the FORM. Status of the state tax liens is unknown. (Item 2 at 4; Item 6)

SOR ¶ 1.c: \$38,738 federal tax lien entered against Applicant in July 2010. (Item 5 at 2) In her response to the SOR, Applicant obtained the services of a tax relief organization to submit an offer in compromise for the federal tax lien. In her response to the FORM, Applicant states they were not successful in reaching an agreement with the IRS. The IRS offered that they pay \$3,000 a month. Applicant and her husband could not afford the payment. She and her husband are now attempting to settle the tax lien directly with the IRS. (Item 6 at 1-2)

SOR ¶ 1.d: \$1,018 judgment entered against Applicant in November 2012. (Item 4 at 3; Item 5 at 2) Applicant claims that the debt relief organization settled the judgment for \$557. She contacted the credit reporting agencies to have the judgment removed from her credit report. No documentary proof was provided that a settlement occurred. The debt remains on a credit report dated April 3, 2015. (Item 2 at 4; Item 6 at 2; Item 5 at 2) Applicant provided a copy of an offer to settle an account for \$557, but it was for a different account than the debt alleged in SOR ¶ 1.d. The April 3, 2015, credit report indicates the debt owed to this other creditor was paid for less than the full balance. This debt was not alleged in the SOR. (Item 2 at 22; Item 4 at 4; Item 5 at 3)

SOR ¶ 1.e: \$15,792 credit card account placed for collection. (Item 5 at 4) Applicant entered into a settlement agreement for this account. The settlement amount is \$5,527.22. Applicant agreed to pay \$460.60 monthly over a 12 month period beginning on September 2014. An August 31, 2015 payment was to be the last monthly

payment. Applicant provided a copy of the settlement agreement, but did not provide proof that she is making the monthly payments. (Item 2 at 4; Item 6 at 6)

SOR ¶ 1.f: \$1,028 store account placed for collection and charged off in February 2011. (Item 4 at 5; Item 5 at 4) Applicant maintains that she settled this account for less than the full amount in 2009. She contacted the company. The company referred her to a collection agency who told her on August 27, 2014, that the account was listed as closed because it was charged off in 2011. Applicant sent a letter to the credit reporting agencies requesting this debt be removed from her credit report. (Item 2 at 5; Item 6 at 2)

SOR ¶¶ 1.g and 1.k: \$630 and \$392 medical accounts placed for collection in July 2011. (Item 4 at 8-9; Item 5 at 2) Applicant indicates that she has agreed to a payment plan with the collection agency for these two medical accounts. Based on the documents provided, Applicant pays \$100 a month toward this payment plan. The last payment will be in September 2015. Applicant provided a receipt for the June 2015 payment. She did not provide proof (such as receipts, cancelled checks etc.) that she has routinely made payments towards this payment plan. (Item 2 at 5; Item 6 at 2, 5)

SOR ¶¶ 1.h, 1.i, and 1.j: \$420, \$188, and \$106 medical accounts placed for collection. (Item 4 at 9; Item 5 at 2) Applicant began payment arrangements in September 2014. She pays a minimum of \$50 a month. Payments will be completed in September 2015. Applicant provided a statement from the creditor that as of June 16, 2015, the balance on the debt is \$583.23. It appears the debt alleged in SOR ¶ 1.j is paid and payments are being made towards the other two accounts. (Item 2 at 5; Item 6 at 2-4)

SOR ¶ 1.l: \$54 medical account placed for collection. Applicant admits this debt, and provided proof that it was paid in full. (Item 2 at 5, 23)

SOR ¶ 1.m: \$50 medical account placed for collection. (Item 4 at 10; Item 5 at 2) Applicant disputes this debt. She does not recognize it. She formally disputed the debt with the credit reporting agencies. She has not received a response from the credit reporting agencies. (Item 2 at 5; Item 6 at 3)

SOR ¶ 1.n: \$4,915 department store credit card account placed for collection. (Item 4 at 4) Applicant had her name removed as an authorized user on this account. The account belongs to her husband. She has not used the account. In her response to the FORM, Applicant states that the account is paid in full. She did not provide proof that the account was paid. (Item 2 at 5, 25-26; Item 6 at 3)

SOR ¶ 1.o: \$934 department store credit card account placed for collection. (Item 4 at 5) Applicant had her name removed as an authorized user on this account. The account belongs to her husband. She has not used the account. In her response to the FORM, she mentions the account was settled. She did not provide proof that it was paid. (Item 2 at 6, 25-26; Item 6 at 3)

SOR ¶ 1.p: \$449 bank debt placed for collection. (Item 4 at 8) Applicant disputes this debt. She claims the \$449 amount involved fraud. She is unable to find the bank statement crediting her account after investigating the fraud. In her response to the FORM, Applicant indicates the fraud was confirmed and the debt was removed from her credit report. The debt is not listed on the April 3, 2015 credit report. (Item 2 at 6; Item 6 at 3)

SOR ¶¶ 1.q, 1.r and 1.s: medical accounts placed for collection in the amounts of \$420, \$188, and \$106. Applicant claims that these debts are duplicates of the medical accounts alleged in SOR ¶¶ 1.h, 1.i, and 1.j. There is sufficient evidence to conclude that the debts alleged in SOR ¶¶ 1.q, 1.r and 1.s are duplicates. (Item 2 at 6; Item 6 at 3)

Applicant did not provide information on her current financial status, such as her and her husband's total net monthly income, their total monthly expenses, and total monthly debt payments. She did not provide any information about her duty performance such as performance evaluations or reference letters from her supervisor or co-workers.

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 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 over-extended 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 Financial Considerations Disqualifying Condition 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 incurred numerous delinquent debts that she has been unable or unwilling to pay over the past several years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

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) partially applies because Applicant is attempting to resolve her delinquent accounts. However, at the

close of the record, she had no plan for resolving her three largest debts, the two tax liens alleged in SOR ¶¶ 1.a and 1.b, and the federal tax debt alleged in SOR ¶ 1.c. For this reason, AG ¶ 20(a) is given less weight.

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), partially applies because Applicant mentions a medical issue as well as her husband being laid off in 2008, resulting in a more than 50% reduction in income in his new job. Applicant appears to have taken steps to begin to resolve her accounts. She provided no information on her current financial situation. I cannot conclude that she behaved responsibly under the circumstances without information about her overall financial situation. For this reason, AG ¶ 20(b) is given less weight.

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) does not apply. There is no evidence Applicant received financial counseling. While Applicant has resolved or is in the process of resolving several of her debts, several large debts including her tax debts remain unresolved.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.e, 1.g – 1.i, and 1.p – 1.s. She resolved or is making payments towards these debts. The debts alleged in SOR ¶¶ 1.a, 1.b., 1.c, 1.d, 1.f, and 1.m remain unresolved. The total balance of unresolved debt is \$62,959. While Applicant attempted to resolve her tax debts, she terminated her agreement with the tax relief firm because she either did not like or could not afford the settlement amount offered by the I.R.S. She appears to have taken little action towards resolving her tax debts on her own accord. Applicant failed to demonstrate that she is making a good-faith effort to resolve the delinquent accounts alleged in SOR ¶¶ 1.a – 1.d, 1.f, and 1.k.

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) applies with respect to SOR ¶¶ 1.q, 1.r and 1.s. Applicant pointed out sufficient evidence in the record to conclude these debts are duplicates of SOR ¶¶ 1.h, 1.i, and 1.j.

While Applicant has brought several of her delinquent accounts current, a significant amount of unresolved debt remains. She has not mitigated the concerns raised under financial considerations.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant's medical issues and her husband's unemployment in 2008 had an adverse impact on her financial situation. However, Applicant does not appear to have a plan with regard to resolving her largest debts, the state and federal tax debts. Applicant did not provide any information regarding her monthly budget and income. As such, it is difficult to assess her current financial situation.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that 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 which raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, a person who has trouble managing his or her finances, raises doubts about his or her ability to handle and protect classified information. Applicant's history of financial problems raises doubts about her ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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.d, 1.f, 1.m: Against Applicant

Subparagraphs 1.e, 1.g – 1.l, 1.n – 1.s: For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge