



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



In the matter of:)	
)	
)	ISCR Case No. 14-03862
)	
)	
Applicant for Security Clearance)	

Appearances

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

05/19/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On January 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 10, 2015. A notice of hearing was issued on April 3, 2015, scheduling the case for April 28, 2015. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified and presented eight documents for the record (AX A-H). I kept the record open for a submission. Applicant timely submitted three pages from her debit account, which was marked as (AX I). The transcript was received on May 6, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant denied six of the SOR allegations under Guideline F, with explanation. Applicant admitted the remaining accounts and explained that some were paid.

Applicant is 33 years old. She graduated from high school in 1998 and attended community college courses. She is a records management specialist. Applicant divorced in 2012, and she has two children from the marriage. Applicant has been with her current employer for about three years. She believes that she has had a clearance since 2002.

The SOR alleges 12 delinquent debts, including judgments, medical accounts, collection accounts, and a car repossession totaling about \$23,000. The credit reports confirm the delinquent debts. (GX 2-4)

Applicant explained that her financial difficulties, including (SOR 1.m). The Chapter 7 bankruptcy petition discharged in July 2004, is the result of her husband's unemployment throughout the marriage. (Tr. 18) Since her divorce in 2011, Applicant has not received any child support. (Tr. 8) She also incurred legal fees for the divorce. (Tr. 31)

The Government stipulated that the delinquent accounts in the SOR have been paid, and Applicant has submitted proof of payment. The accounts that are paid are SOR 1.b,1.d, 1.e, 1.f, and 1.j. (AX A-B-C-D)

As to SOR allegation 1.a, Applicant states that this is the largest account that is delinquent. Applicant co-signed a loan for a truck that her husband used. She made payments on the truck until the divorce. (AX I) Applicant's former husband promised to make payments as he was in possession of the truck. She gave the creditor her husband's information, but she is not sure that he is making payments. She reports that the truck had engine trouble and her husband voluntarily returned the truck. The amount in question is \$9,530 for the charged-off account. She has no other knowledge of the matter. Applicant submitted proof the payments that she made. (Tr. 16) The debt in SOR 1.a is the same as 1.k, who was the original creditor. (AX I) Applicant has not been contacted by the creditor to learn what the balance is after the truck was sold. (Tr. 26) She is willing to contact them to seek a resolution to the problem.

As to the SOR allegation 1.c, Applicant submitted post-hearing documentation that the account in the amount of \$250 has been paid. (AX I) I accept that the debt is paid.

Applicant denied the accounts in 1.g (\$37); 1.h (\$469); 1.i \$(65); and 1.l (\$800). She contacted the creditors but could not obtain any information. She believes that these accounts might have been her husband's responsibility. (Tr. 30) She is willing to seek a resolution to the accounts as she wants to settle or arrange payment plans. (Tr.

32) Before the security investigation, she had no idea that these accounts were on her credit report. (Tr. 33) Her plan is to repair her credit and make payments on debts.

Applicant's current position is stable. Her net monthly income is \$5,642. After her daily expenses and debt payments for her car and two credit cards, she has a net monthly remainder of about \$935. She has a roommate who provides her with \$800 a month for rent. She has a 401(k). Applicant uses a budget and is current with all her expenses. (AX E) uses a budget.

Applicant submitted a character reference from her branch chief, who has known her for 15 years. He describes Applicant as professional, trustworthy, and efficient. According to her chief, Applicant has always abided by the rules and regulations and respects classified information. He knows about the financial considerations security concerns and believes that the issues were caused by circumstances beyond her control. She is acting in a responsible fashion to remedy and resolve the financial issues. (AX H)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Applicant had delinquent debts. Her credit reports confirm the debts. She also had a 2004 bankruptcy discharge when she was married. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant incurred delinquent debt due to her former husband's frequent unemployment and 2012 divorce. She receives no child support and is raising two children. She has paid many debts and was making payments on the largest debt for years until the divorce. She is current on her expenses. Consequently, Financial Considerations Mitigating Condition (FC MC) 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.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. As noted above, Applicant's financial difficulties are a combination of her husband's lack of financial responsibility, divorce, and single parenthood. She was the sole provider during most of the marriage. She acted responsibly by paying her bills, including the truck that was in the possession of her husband. He has not made any payments. She contacted creditors when she learned about the delinquent accounts during the security investigation.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has limited application. Applicant provided proof that she has paid many of the delinquent accounts. She has made significant efforts and has provided documentation of her payments. She presented a post-hearing submission that confirms that the majority of the debts are paid. Her plan is to seek a resolution to the remaining accounts. FC MC 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) applies.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. She has held a security clearance since 2000. She has a favorable letter of recommendation from her employer. She has had no security incidents. She is a single parent who provides for her children and does not receive child support.

Applicant states that the majority of her financial difficulties stem from her husband's lack of employment and the divorce. She paid on the largest debt (the truck that was returned to the company) until the divorce. She has paid many of the other accounts. She contacted creditors. She has not ignored her situation. Applicant has mitigated the security concerns under the financial considerations guideline. She has met her burden of proof.

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 :	FOR APPLICANT
Subparagraphs 1.a-1.m:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge

