



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-04278
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

October 27, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was indebted to 7 creditors in the total approximate amount of \$84,306. She recently paid one of them, for \$212. Additionally, her wages have been garnished five times for her failure to pay her local and Federal tax obligations. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on September 21, 2009.¹ On November 12, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing 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*

¹Item 4.

Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR, dated December 10, 2014, and requested that her case be decided by an administrative judge on the written record without a hearing.² Department Counsel submitted the Government's written case on June 17, 2015, containing five Items. A complete copy of the File of Relevant Material (FORM) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant signed the document acknowledging receipt of her copy of the FORM on June 27, 2015. She submitted a 17-page response to the FORM (Response). Department Counsel had no objections to Applicant's Response and it was admitted. I received the case assignment on August 20, 2015.

Findings of Fact

Applicant is 46 years old, and has worked for a defense contractor since 2009. She served in the Army from 1987 to 1990 and received an honorable discharge. She is divorced, and identified no children. She has an associate's degree.³

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on seven debts in the total amount of \$84,306 in SOR ¶¶ 1.a through 1.g. Additionally, Applicant's wages were garnished by local and Federal taxation authorities five times between 2010 to 2013 to resolve unpaid taxes. In Item 2, Applicant admitted all of the delinquent debts and garnishments as set forth in SOR ¶¶ 1.a through 1.i. Applicant's delinquent accounts appeared on her notices of Federal, State and Local liens; and her credit reports dated February 19, 2015; October 7, 2014; April 9, 2014; March 4, 2013; and March 23, 2013.⁴

Applicant attributed her delinquent debts to a number of causes. She indicated she experienced fluctuations in her pay due to sequestration. She noted that her work schedule fluctuated and this caused her to prioritize payments to her creditors. She attributed some of her debts to a period when she was laid-off from work, but she failed

² Item 2.

³Item 4.

⁴Items 3 through 9.

to explain the duration or financial impact of that layoff. She also noted problems with a "bad check" her former landlord wrote to her and an April 2012 car accident.⁵

Applicant is indebted on a state tax lien in the amount of \$959, as alleged in SOR ¶ 1.a. In Item 2, Applicant claimed that this debt was paid as of "12/10/14" and that the lien will be released by the end of the month. However, in her Response Applicant produced a document from her state taxation authority showing she made a \$553.23 payment on February 9, 2015. That document does not show whether that payment resolved this debt or if a remainder is still due. Applicant failed to produce sufficient documentation to show this debt is resolved.⁶

Applicant is indebted on a delinquent collections account in the amount of \$483, as alleged in SOR ¶ 1.b. This debt has been delinquent since December 2012.⁷ In Item 2, she promised to resolve this debt by the end of January 2015. In her Response, she presented a letter from this creditor, which indicated Applicant has set up an automated payment plan to pay \$216.30 on July 17, 2015, and July 31, 2015, to resolve this debt. She failed to show proof that she followed through with that agreement and made the payments. This debt is unresolved.⁸

Applicant is indebted on a delinquent utility account in the amount of \$302, as alleged in SOR ¶ 1.c. This debt has been delinquent since 2009.⁹ In Applicant's Response, she indicated she had made arrangements with this creditor to make a payment of \$152.49 on July 14, 2015, and a payment of \$150 on July 31, 2015, to satisfy this debt. Applicant failed to provide documentation showing proof she made any payments under this agreement. This debt is not resolved.¹⁰

Applicant is indebted on a delinquent collection account in the amount of \$482, as alleged in SOR ¶ 1.d. She provided documentation from this creditor showing she had agreed to make two electronic payments of \$296.26 each, to satisfy this debt. However, Applicant failed to include proof she made any payments under that agreement. This debt is unresolved.¹¹

Applicant is indebted on an overpayment from an agency of the Federal government in the amount of \$47,476, as alleged in SOR ¶ 1.e. She produced

⁵Item 2.

⁶Response.

⁷Item 5.

⁸Response.

⁹Item 5.

¹⁰Response.

¹¹Response.

documentation of a payment agreement to repay this debt through monthly installments of \$250. However, Applicant failed to include proof she made any payments under that agreement. This debt is unresolved.¹²

Applicant is indebted on a delinquent collection account in the amount of \$212, as alleged in SOR ¶ 1.f. Applicant submitted a July 24, 2015 letter from this creditor showing that this debt was paid. This debt is resolved.¹³

Applicant is indebted on a delinquent student loan in the amount of \$34,392, as alleged in SOR ¶ 1.g. Applicant presented documentation to show she made an agreement to pay \$50 per month on this debt. The balance was listed as \$47,604.05. She failed to document payments under this agreement. This debt is unresolved.¹⁴

Applicant was indebted on a Federal tax lien in the amount of \$950.91, as alleged in SOR ¶ 1.h. Her wages were involuntarily garnished in July 2010 to satisfy this debt. Documentation from the IRS shows she had unpaid balances from the 2007, 2008, and 2010 tax years.¹⁵

Applicant was indebted on a Federal tax lien in the amount of \$7,070.39 for three different tax years, as alleged in SOR ¶ 1.i. Her wages were involuntarily garnished in November 2012 to satisfy this debt.¹⁶

Applicant was indebted on county tax lien in the amount of \$718.39, as alleged in SOR ¶ 1.j. Her wages were involuntarily garnished in January 2013 to satisfy this debt.¹⁷

Applicant was indebted on county property tax lien in the amount of \$300.76, as alleged in SOR ¶ 1.k. Her wages were involuntarily garnished in August 2013 to satisfy this debt.¹⁸

Applicant was indebted on a Federal tax lien in the amount of \$7,016.52, as alleged in SOR ¶ 1.l. Her wages were involuntarily garnished in December 2013 to satisfy this debt.¹⁹

¹²Response.

¹³Response.

¹⁴Response.

¹⁵Item 2; Item 3.

¹⁶Item 2.

¹⁷Item 2; Item 3.

¹⁸Item 2; Item 3.

¹⁹Item 2.

The record lacks evidence concerning the quality of Applicant's professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing her judgment, trustworthiness, integrity, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or

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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 overextended is at risk of having to engage in illegal acts to generate funds.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant has a long history of delinquent debt. From 2009 to present, she accumulated numerous unresolved delinquent accounts. Her wages have been involuntarily garnished to resolve local, state, and Federal tax obligations dating back to 2007. Her ongoing pattern of delinquent debt and history of inability or unwillingness to pay her lawful debts raises security concerns under DCs 19(a) and (c), and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant failed to produce sufficient evidence that she has addressed her delinquencies. She offered little evidence from which to establish a track record of debt resolution. While she voluntarily resolved one debt, alleged in SOR ¶ 1.f, and the tax delinquencies described in SOR ¶¶ 1.h through 1.l were resolved involuntarily through garnishment, she failed to demonstrate good judgment under the circumstances. Financial problems are likely to recur and continue to cast doubt on Applicant's reliability, trustworthiness, and judgment. Mitigation under AG ¶ 20 (a) is not established.

While Applicant claimed that conditions beyond her control contributed to her financial problems, she failed to present evidence to substantiate that she followed through on her promises to her creditors. While she may have experienced a period of unemployment and a vehicle accident, the duration and impact of those events was not apparent from the record. Her under-employment during sequestration may also have hindered her ability to repay her debts, but she failed to show what she has done since then to responsibly address them. Mitigation under AG ¶ 20 (b) is not established.

Applicant did not produce evidence that she received financial counseling. While she has recently made agreements to pay her remaining delinquencies, she did not document that she followed through with those agreements. The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner.²⁰ She has not demonstrated a good-faith effort to resolve her debts. Mitigation under AG ¶¶ 20 (c) or 20 (d) is not established.

MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt. Applicant did not dispute any of the alleged debts. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

²⁰ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for her voluntary choices and conduct that underlie the security concerns expressed in the SOR. Her SOR-listed delinquent debts arose over the past six years and appear to remain unresolved despite her employment during the period involved. She offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of her life to offset resulting security concerns. The potential for pressure, coercion, and duress from her financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant
Subparagraphs 1.f:	For Applicant
Subparagraphs 1.g through 1.i:	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 a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge