



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



In the matter of:)	
)	
)	ISCR Case: 14-04385
)	
Applicant for Security Clearance)	

Appearances

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

06/30/2015

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial delinquencies. She filed a Chapter 7 bankruptcy in 2000 resulting in a discharge of debts. In 2012 she filed a Chapter 13 bankruptcy, which was dismissed because she failed to make payments on a repayment plan. She subsequently continued to accumulate delinquent debts and judgments. She failed to provide sufficient evidence that she is resolving 17 of the 19 alleged delinquent debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Ruling on Evidence

Item 6 is a Report of Investigation (ROI) from the background investigation of Applicant. The six-page document is a summary of an interview of Applicant the Government conducted on February 5, 2014. An ROI may be received and considered as evidence when it is authenticated by a witness.¹ Although Applicant, who is

¹Directive, Enclosure 3, ¶ E3.1.20; see ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014) (the Appeal Board restated existing case law that a properly authenticated report of investigation is admissible).

representing herself, has not raised the issue via an objection, I am raising it *sua sponte*. While it is clear that Department Counsel is acting in good faith, having highlighted the issue in the FORM,² Exhibit 6 is not authenticated. Applicant's failure to reply to the FORM is not a knowing waiver of the rule.³ Accordingly Item 6 is not admissible and is not considered in this Decision.

Statement of Case

On December 5, 2013, Applicant submitted a security clearance application (SF-86) for an investigation. On October 29, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), 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 Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective in the DOD after September 1, 2006.

Applicant answered the SOR on November 21, 2014, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On March 12, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was provided to Applicant on April 10, 2015, 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 April 16, 2015, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). She provided four documents in response to the FORM within the 30-day period. I marked those documents as Appellant Exhibits (AE) A through D and admitted them into the record without objection from Department Counsel. DOHA assigned the case to me on June 8, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted responsibility for 20 of the 21 SOR allegations and denied one: ¶ 1.k. (Item 1.) Those admissions are incorporated into these findings of fact.

² Department Counsel Brief at 2, n 1.

³ Wavier means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009).

Applicant is 42 years old. She is married and has three children. In September 2013 she began a position as a painter for a defense contractor. Prior to this job, she worked from August 1994 to August 2013 for a national retailer. (Item 5.)

Applicant attributed some of her financial problems to inconsistent hours with the national retailer and her husband's periodic employment in construction. She stated that she is working with a credit repair company to help resolve debts. (AE B.) She provided a monthly budget. She and her husband's net monthly income is \$2,633. Her expenses are \$2,326, leaving about \$307 remaining. She is making about \$237 in payments to other creditors, including a hospital, automobile loan company, and the Internal Revenue Service (IRS) on a \$767 balance for tax year 2011.³ (AE A.)

Based on credit bureau reports (CBR) dated January 2014, and September 2014, the SOR alleged two bankruptcies, and 19 delinquent debts totaling over \$12,000, which accumulated between 2009 through 2013. They included ten judgments owed for unpaid rent, medical bills, cell phone services, and to other creditors. (Item 1.) Applicant provided proof that she paid or resolved the \$466 debt alleged in SOR ¶ 1.i, and the \$1,198 debt alleged in SOR ¶ 1.k. (AE D, AE E.)

There is no evidence that Applicant obtained credit or budget counseling. She submitted no evidence concerning the quality of her performance, or the level of responsibility her duties entail. She provided no character references describing her judgment, trustworthiness, integrity, or reliability.

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 (AG) 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, 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

³The SOR did not allege this unpaid Federal tax debt as a security concern. Hence, it will not be considered in the analysis of disqualifying conditions, but may be considered in the analysis of mitigating conditions or the whole-person concept.

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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's delinquent debts accumulated between 2009 and 2013. She has been unable or unwilling to satisfy or resolve them until recently. The evidence raises both security concerns, thereby shifting 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 has a history of financial problems. She accumulated delinquent debts prior to filing a 2000 Chapter 7 bankruptcy, and subsequently accumulated more before filing a Chapter 13 bankruptcy in 2012, which was later dismissed because payments were not made. Her delinquent debts continue to date. Because she failed to sufficiently address 17 of the 19 SOR-listed debts, she did not demonstrate that such problems are unlikely to continue or recur. Her reliability and trustworthiness in managing delinquent debts remain of concern. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that her financial problems arose because she and her husband experienced periods of insufficient work. Those facts may be the result of circumstances beyond her control. However, she did not provide sufficient proof that she acted responsibly or attempted to resolve the debts while they were accumulating, either prior to either bankruptcy or subsequent to them. AG ¶ 20(b) has limited application.

Applicant did not present evidence that she participated in financial, budget, or credit counseling, and there are minimal indications that her delinquent debts are under control. She said she engaged a credit company to resolve debts, but she did not submit proof of that engagement, the date on which she hired the company, or the debts included in the program. Thus, AG ¶ 20(c) has limited application. She provided documentation that she made a good-faith effort to resolve two of the 19 SOR-listed debts. Hence, AG ¶ 20(d) has application to those debts. Applicant did not provide evidence that she had a reasonable basis to dispute any delinquent. AG ¶ 20(e) has no application.

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.

According to 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 42 years old. She has a long history of financial problems, dating back to 2000, and including current unpaid Federal taxes. She has been employed with a defense contractor since September 2013, and was also employed for the previous 19 years. She provided evidence that she resolved two of the 19 SOR-listed debts, but provided no proof that she has a solid plan for resolving the remaining 17 debts. Although she has taken a step to address her financial obligations by hiring a company to assist in the resolution of debts, her budget has little room for addressing the unpaid debts. At this time she has not established a track record of managing and resolving debts. The likelihood that similar problems will continue is significant, and the potential for pressure, coercion, or duress is undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising under the guideline for 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l through 1.u:	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.

SHARI DAM
Administrative Judge