



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



In the matter of:)	
)	
)	ISCR Case No. 14-05741
)	
Applicant for Security Clearance)	

Appearances

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

11/15/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On December 23, 2014, 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 review based on the written record in lieu of a hearing. The case was assigned to me on October 28, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated June 11, 2015.¹ Applicant received the FORM on August 19, 2015. Applicant did not submit information in response to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

¹The Government submitted 11 items for the record.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations) with explanations. (Item 2) She denied one allegation, that of 1.c, and provided an explanation.

Applicant is a 24-year-old employee of a defense contractor. She is a high school graduate, single mother with one child. (Item 3) She has worked for her employer since 2011. She completed a security clearance application in 2013.

The SOR alleges ten delinquent debts totaling \$8,419. (Item 1) The allegations include failure to file her federal and state income tax returns for tax year 2012 and 2013, collection accounts and default judgments. (Items 4-6)

Applicant attributes her delinquent debts to bad credit decisions when she was younger. She was unemployed while pregnant from February to April 2011, and was employed part time from 2004 to 2007 with a private company. She understands that it is her ultimate responsibility to negotiate or resolve the debts. She stated that she is working to improve her financial profile. She states that she is current with her bills and is not receiving any government assistance. She also states that she is a law abiding citizen with no criminal record. (Item 2 and 11)

As to the SOR allegation at 1.a for failure to file Federal tax returns for tax years 2012 and 2013, Applicant admitted the late filing and stated that they should be filed by February 2015. She did not provide any documentation to support this claim.

As to the SOR allegation at 1.b for failure to file state income tax returns for tax years 2012 and 2013, Applicant admitted the late filing and stated that she is in the process of filing them. Again she stated that they should be filed by February 2015. There is no evidence in the record that she has filed the returns.

As to the alleged debt at 1.c, Applicant denied the debt in her answer. She claims that this is a duplicate of another debt in 1.g for \$2,322 to a furniture store. She did not provide any documentation to support this claim. There is no evidence of any payments made on the account.

As to the SOR allegation at 1.d, for \$1,060 to a power company, Applicant admitted the debt. There is no evidence of any payments made on the account. (Item 5) It has been delinquent since 2012.

Applicant admitted the debt at SOR 1.e, for a medical account in the amount of \$554. She stated that she was arranging a payment plan for this debt, but she did not provide any evidence to support the claim. The account has been delinquent since 2010. (Item 5)

As to the SOR allegation at 1.f, for a 2011 judgment in the amount of \$645, Applicant admitted the debt, but the records show that it has not been satisfied. She stated that it was a balance from an apartment lease and she is trying to contact them.

The SOR allegation in 1.g is a judgment in the amount of \$2,670. The judgment was filed in 2011. She states that this is a duplicate of the account listed as 1.c, but there is no documentation to substantiate this claim.

As to the debt at 1.h, in the amount of \$101, Applicant admitted the debt and stated that she was arranging a payment, but there is nothing in the record to support her claim. It is listed as unsatisfied on her credit report. (Item 6) She also stated that the debt at 1.i is the same type of debt and that she was arranging a payment. There is nothing in the record to support this. Her credit report lists the judgment as not satisfied. (Item 6)

As to the SOR allegations at 1.j and 1.k, they are owed to the same cable company, \$361 and \$375 respectively. Applicant admitted the debts and stated that they would be paid by April 2015. She did not provide any documentation of payments.

Applicant stated that the delinquent account in 1.l has been paid. This is listed as 2014 judgment in the amount of \$214. She did not provide any evidence to support this claim.

Applicant estimates her monthly net income as approximately \$800 to \$1,200. She has about \$1,500 in monthly expenses. This leaves her with a negative net remainder each month. There is no information concerning financial counseling. (Item 11)

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ 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:

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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.

Applicant incurred delinquent debt in the amount of about \$8,322. She also failed to file Federal and State tax returns for tax years 2012 and 2013. Consequently, Financial Considerations Disqualifying Condition (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. In addition AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of same) applies. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant notes that she made poor decisions. She still owes the delinquent debt. 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) does not apply.

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) does not apply. Applicant was unemployed for a short time, but she did not provide any nexus between the unemployment and lack of payments. She has not provided documentation of any payments on the debts or the filing of the income tax returns. Thus, she has not acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not apply.

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):

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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge