



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-02042
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

HOGAN, Erin C., Administrative Judge:

On October 25, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline H, Drug Involvement. 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 DOD after September 1, 2006.

On November 16, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on December 30, 2015. Applicant received the FORM on January 4, 2016. She had 30 days from the receipt of the FORM to submit an additional response to the FORM. She did not submit a response to the FORM. On March 21, 2016, the FORM was forwarded to the Hearing Office and assigned to me on March 29, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Rulings on Evidence

Item 4 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. It is a summary of Applicant's Personal Subject Interview completed by the investigator conducting her background investigation on November 12, 2014. It is unsworn and unauthenticated. DODD 5220.6, Enclosure 3, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)).

Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte* because Item 4 is not properly authenticated. Applicant's failure to mention this issue in a response to the FORM is not a knowing waiver of the rule because she more than likely was unaware of the rule. Waiver means "the 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, editor-in-chief, 9th ed., West 2009).

While Department Counsel mentions the authentication requirement of ¶ E3.1.20 of the Directive in Footnote 1 of the FORM without directly citing it, I cannot conclude Applicant expressly waived this rule because she did not respond to the FORM. In accordance with the Directive, Enclosure 3, ¶ E3.1.20, Item 4 is not admissible and will not be considered in this decision.

Findings of Fact

In her response to the SOR, Applicant denies the allegations in SOR ¶¶ 1.d and 1.k. She admits the remaining SOR allegations. (Item 2)

Applicant is an employee of a DOD contractor seeking a security clearance. She has worked for her current employer since May 2014. The highest level of education received is a bachelor's degree. She and her husband have been separated since September 2012. A divorce is pending. She has two children, ages 9 and 6. (Item 3)

On July 7, 2014, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed several delinquent accounts. (Item 3, section 26) A subsequent background investigation revealed the following delinquent accounts which are alleged in the SOR: a \$441 account placed for collection in October 2012 (SOR ¶ 1.a: Item 6 at 2; Item 7 at 1); a \$3,692 credit-card account that was charged off in October 2012 (SOR ¶ 1.b: Item 5 at 4; Item 6 at 1; Item 7 at 3); a \$3,299 credit-card account placed for collection in July 2012 (SOR ¶ 1.c: Item 5 at 15; Item 6 at 2; Item 7 at 3); a \$2,523 credit-card account placed for collection in July 2012 (SOR ¶ 1.d: Item 5 at 15; Item 6 at 2; Item 7 at 3); a \$4,847 credit-card account that was charged-off in July

2012 (SOR ¶ 1.e: Item 5 at 3; Item 6 at 2; Item 7 at 4); and a \$3,192 bank account that was charged off in July 2014 (SOR ¶ 1.f: Item 5 at 3; Item 6 at 2; Item 7 at 5).

Additional delinquent accounts include: a \$734 credit-card account that was charged off in July 2012 (SOR ¶ 1.g: Item 5 at 4; Item 6 at 2; Item 7 at 7); a \$487 department store credit-card account that was charged off in June 2012 (SOR ¶ 1.h: Item 5 at 5; Item 6 at 2; Item 7 at 7); a \$1,613 department store credit-card account that was charged off in November 2012 (SOR ¶ 1.i: Item 5 at 4; Item 6 at 2; Item 7 at 8); a \$9,050 credit-card account that was charged off in July 2012 (SOR ¶ 1.j: Item 5 at 3; Item 6 at 2; Item 7 at 9); a \$441 account that was placed for collection in October 2012 (SOR ¶ 1.k: Item 5 at 5); and a \$288 utility account that was placed for collection in December 2012 (SOR ¶ 1.l: Item 5 at 15).

Applicant had two periods of unemployment, from October 2013 to May 2014, and from November 2011 to April 2012. (Item 3 at 13-16) In her response to the SOR, Applicant explains that she encountered financial problems when she separated from her husband in September 2012. With the loss of joint income, Applicant was unable to keep up with her debts. She was able to pay only a few important accounts. At some point, she hired a law firm to help manage her debt for a period of nine months. She claims the law firm repaired her credit and worked on removing negative comments from her credit history. She states that many of the charges are written off, but remain on her credit history. She has made payment arrangements on those debts that she can afford and states her credit has significantly improved. (Item 2 at 1)

The status of the SOR debts are as follows:

SOR ¶ 1.a: \$441 debt owed to a bank. Applicant admits the debt. She says that the balance of this debt has been combined with the balance of the debt alleged in SOR ¶ 1.f. She entered into a repayment agreement with the bank. She pays \$100 a month. She has been paying on this debt for over a year and she says that her payments are timely. (Item 2 at 1) She did not provide additional documentation, such as the repayment agreement, bank records, checks, or statement of payment history from the bank corroborating her statement that she is making payments towards this debt.

SOR ¶ 1.b: \$3,692 charged off delinquent credit-card account. Applicant admits this debt and she is working on a payment plan to satisfy this debt. (Item 2 at 1)

SOR ¶ 1.c: \$3,299 credit-card account placed for collection. Applicant admits the debt and says the account has been bought by several collection agencies. She did not indicate how she plans to resolve this debt. (Item 2 at 1)

SOR ¶ 1.d: \$2,523 credit-card account placed for collection. Applicant denies this debt. She claims she sent the creditor a request for further information regarding the debt. She did not provide a copy of her correspondence to the creditor and did not say why she denied the debt. (Item 2 at 2)

SOR ¶ 1.e: \$4,847 charged-off account: Applicant admits this debt and will be working on a payment plan to satisfy this debt. (Item 2 at 2)

SOR ¶ 1.f: \$3,192 charged-off account owed to a bank. Applicant admits this debt. It was combined with the debt alleged in SOR ¶ 1.a. Applicant claims she has been paying \$100 monthly payments for over a year. She did not provide additional documents verifying the payment plan and that she was making payments. (Item 2 at 2)

SOR ¶¶ 1.g, 1.h, and 1.i: charged-off accounts with respective balances of \$734, \$487, and \$1,613: Applicant admits to these accounts. She states that they were charged off. She did not state whether she had a plan to resolve these accounts. (Item 2 at 2)

SOR ¶ 1.j: \$9,050 charged-off account owed to a bank: Applicant admits the debt and says that she will be working on setting up a payment plan to resolve this debt. (Item 2 at 2)

SOR ¶ 1.k: \$441 debt that was placed for collection: Applicant denies this debt. She has no knowledge of this account. She points out that it is the same amount as the balance of the debt alleged in SOR ¶ 1.a. (Item 2 at 2) Upon review of the credit report entries of the debts in SOR ¶ 1.a and SOR ¶ 1.k, the account numbers are identical. The debt appears to have been transferred to a collection agency. (Item 5 at 5; Item 7 at 1) I find the debt alleged in SOR ¶ 1.k is a duplicate of the debt alleged in SOR ¶ 1.a. SOR ¶ 1.k is found for Applicant.

SOR ¶ 1.l: \$288 utility account placed for collection: Applicant admits the debt and says that she will work to satisfy this debt. She believes the account was charged off. (Item 2 at 2)

Guideline H - Drug Involvement

The SOR alleges Applicant used marijuana with varying frequency from January 2007 to January 2012. In response to section 23 – Illegal Use of Drugs or Drug Activity, Applicant listed that she smoked “weed” from January 2007 to January 2012. She smoked it in social settings. She stopped using “weed” because she is older and has a different lifestyle. (Item 3, section 23, at 32-33) In her answer to the SOR, Applicant states that she has been 100% drug free for many years. She claims that she was not a regular user of marijuana and only smoked a few times a year during the period of years listed. She is not proud of her past marijuana use. She has completely changed her lifestyle. (Item 2 at 2)

Applicant states that she takes her job very seriously and is supporting two young children. She works hard to make continuous positive improvements. She lives a healthy, smoke- and drug-free lifestyle and tries to be the best role model as possible for her children. She does not have a criminal record. She is trustworthy. (Item 2 at 2)

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 determining 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 as to 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 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.

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 overextended 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 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 encountered financial problems since about 2012. The SOR alleges 12 delinquent debts, an approximate total balance of \$30,607. These debts became delinquent in 2012 and remain unresolved. Both AG ¶ 19(a) and AG ¶ 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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;

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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

AG ¶ 20(a) does not apply. Applicant incurred the delinquent accounts alleged in the SOR, most of which are over four years old. The debts were charged off or placed for collection 2012. While Applicant states that she hired a law firm to assist her in repairing her credit, she provided no documentation verifying this or what the law firm actually did for Applicant. She claims that she is in a payment agreement with the debts alleged in SOR ¶¶ 1.a and 1.f, but provided no proof such as a copy of the payment agreement as well as receipts, bank statements, cancelled checks, payment histories (etc.), to show that she was making timely payments in accordance with the plan. All remaining debts are unresolved and Applicant has not taken steps to resolve these debts. AG ¶ 20(a) does not apply because Applicant's financial issues remain current and ongoing. While Applicant intends to pay her debts, she has taken little action to resolve the debts.

AG ¶ 20(b) partially applies in that Applicant's financial problems were caused by her separation from her husband in 2012. It is not clear whether the divorce is final. Applicant also had two periods of unemployment from November 2011 to April 2012, and from October 2013 to May 2014. This mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. Applicant provided little information about her financial situation such as her monthly income and her monthly financial obligations. She did not explain why she could not begin to resolve her delinquent accounts once she gained full-time employment in May 2014.

AG ¶ 20(c) does not apply. While Applicant consulted a law firm to repair her credit, it is not clear in what capacity the law firm acted on Applicant's behalf. It does not appear that Applicant received financial counseling. Applicant did not provide sufficient

documentary evidence that she was resolving her delinquent accounts. Applicant's financial situation remains unstable.

I cannot conclude AG ¶ 20(d) applies because Applicant provided no proof of the repayment agreement as well as proof of payments towards the agreement for the debts alleged in SOR ¶¶ 1.a and 1.f. While Applicant states that she intends to pay her debts, she has not taken steps to resolve the remaining delinquent debts. I cannot conclude Applicant initiated a good-faith effort to resolve her debts.

AG ¶ 20(e) applies with respect to the debt alleged in SOR ¶ 1.k. It is a duplicate of the debt alleged in SOR ¶ 1.a. While Applicant indicated that she disputed the debt alleged in SOR ¶ 1.d, she did not provide documentation of her actions, such as a dispute letter, and explain the basis for the dispute. AG ¶ 20(e) does not apply with respect to the debt alleged in SOR ¶ 1.d.

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant's case.

AG ¶ 25(a) any drug abuse; and

AG ¶ 25(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana with varying frequency from January 2007 to January 2012. She used marijuana on a recreational basis. AG ¶ 25(a) applies. AG ¶ 25(c) also applies because Applicant occasionally possessed marijuana.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to Applicant's case:

AG ¶ 26(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; and

AG ¶ 26(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.

AG ¶ 26(a) applies because Applicant stopped using marijuana over four years ago. Applicant did not use marijuana while holding a security clearance. She stopped using marijuana in order to live a more healthy lifestyle and to provide a positive role model for her children. Applicant was forthcoming about her illegal drug use on her security clearance application. Applicant appears to understand the security concern involving illegal drug use. It is unlikely that she will jeopardize her future by returning to illegal drug use.

AG ¶ 26(b) applies because Applicant has not used illegal drugs in over four years. Life circumstances have changed for Applicant. She has matured and is focused on her children's future. She is not proud of her past marijuana use and has completely changed her life style. Applicant met her burden to mitigate the security concerns raised under Guideline H, Drug Involvement.

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.

In requesting an administrative determination, Applicant chose to rely on the written record. However, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances and documents that would mitigate financial considerations security concerns.

The determination of an individual's eligibility for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating to the evidence presented. Under Applicant's current circumstances, the granting of a security clearance is not warranted. In the future, if Applicant establishes a track record of resolving her delinquent debts, she may demonstrate persuasive evidence of her security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's employment record, including her two periods of unemployment. I considered her two years of employment with her current employer. I considered her financial problems were caused when she and her husband separated in 2012. However, Applicant has not demonstrated that she has taken reasonable steps to resolve her delinquent accounts. At the close of the record, most of the debts alleged in the SOR remain unresolved. In the future, Applicant may be able to demonstrate a track record of resolving her financial obligations. It is too soon to make this conclusion at this point. The security concerns raised under financial considerations are not mitigated. The security concerns under drug involvement were mitigated because Applicant stopped marijuana use four years ago.

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.j, 1.l: Subparagraph 1.k:	Against Applicant For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For 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.

ERIN C. HOGAN
Administrative Judge