



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-05440
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

10/28/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted insufficient documentary evidence to mitigate Guideline F security concerns. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On January 15, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (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; DOD 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 on September 1, 2006.

In a response to the SOR, dated February 2, 2015, Applicant admitted the nine allegations raised and requested a determination based on the written record in lieu of a hearing. On August 4, 2015, the Government issued a File of Relevant Material (FORM) that contained six attachments (“Items”). Applicant received the FORM on August 14, 2015, and did not respond within the 30 days provided. The case was assigned to me on October 9, 2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 32-year-old clerk working for a defense contractor. She has earned an associate's degree. Currently single, she is the mother of one child. Over the past decade, Applicant experienced periods of unemployment from July 2011 to August 2011, July 2008 to September 2008, and December 2007 to January 2008. At issue in the SOR are nine allegations (1.a-1.i), each representing a delinquent debt. In sum, the past-due accounts at issue amount to approximately \$15,750 in debt. They range in amount from \$272 to \$5,586.

Applicant attributes her acquisition of delinquent debt on a move to a different state, but little information is provided regarding this move, including the date of the move. (FORM, Item 6 at 3, 5) She believes her debts are tied to events beyond her control, but remains unclear as to her basis for this assertion. Applicant is helping her brother pay his mortgage and helping her sister with her debts. She has no knowledge of many of the accounts at issue. There is no documentary evidence indicating Applicant has disputed any of the accounts at issue or received financial counseling.

Lacking a response to the FORM, information about Applicant and her finances is limited. Unverified investigator's notes, a security clearance application, and Applicant's brief response to the SOR comprise the majority of the official case file. In response to the SOR, Applicant wrote:

I admit I am in debt to the nine accounts provided on the [SOR]. . . . I am aware of my financial issue and debt. Therefore, I understand the reasoning for my denial of eligibility for my security clearance. However, I plan to resolve my financial issues and delinquent debts by this year. I may not be financially able to pay the entire amount off in one payment. However, I plan on seeking financial advice and try to pay it off in increments of what I could currently afford. (FORM, Item 2 at 3)

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 list potentially disqualifying conditions and mitigating conditions, which are 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 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, 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 and has the ultimate burden of persuasion to obtain 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant incurred approximately \$15,750 in delinquent debt. Applicant admits the related SOR allegations. This is sufficient to raise two financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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.

Applicant attributed her delinquent debts to her move to another state at some unclear time in the past decade. She did not, however, provide sufficient documentary evidence to show that this vaguely defined move was necessary, or provide a narrative linking that move to her currently delinquent debts. There is no evidence showing that she behaved in a financially responsible manner at the time of this move. She did not attempt to attribute her delinquent debts to her brief periods of unemployment. There is no evidence she has disputed any of the multiple accounts still at issue, or otherwise attempted to address those debts. Indeed, Applicant concedes she has made no progress on the debts at issue, and there is no evidence of a reasonable plan to address them in the near future. Given these facts, none of the available mitigating conditions apply, and financial considerations security concerns remain unmitigated.

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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under

the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a single, 32-year-old, mother of one child who is working as a clerk. She has earned an associate's degree. She experienced periods of unemployment from July 2011 to August 2011, July 2008 to September 2008, and December 2007 to January 2008. At issue in the SOR are nine past-due accounts (1.a-1.i), amounting to approximately \$15,750 in debt. Those debts range in amount from \$272 to \$5,586.

The burden in these proceedings is on the applicant to provide evidence rebutting, refuting, or otherwise challenging documented evidence of delinquent debt. Applicant provided little more than a brief and general commentary in response to the SOR allegations as a whole. In that commentary, she admitted the debts at issue and conceded that no action had been taken on those debts. Lacking documented progress on the past-due accounts at issue or evidence that a reasonable plan for addressing these debts has been successfully implemented, financial considerations security concerns remain unmitigated.

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.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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge