



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-05828
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

06/01/2016

Decision

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

Statement of the Case

On August 26, 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).¹ In a September 21, 2015, answer to the SOR, Applicant responded to the allegations with comments. She also requested a determination based on the written record. On November 25, 2015, the Government issued a File of Relevant Material (FORM) with eight attachments (“Items”). Applicant timely responded to the FORM. The case was assigned to me on March 3, 2016. 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 45-year-old information technology resource assistant who has worked for the same defense contractor since 2005. From 2007 to 2012, she also held a part-time job. She is divorced and has an adult daughter. Applicant earned a high

¹ 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.

school diploma and an executive assistant diploma. She has no prior military experience. In 2012, she received credit counseling with an entity through which she developed a budget. She told investigators in late 2012 that it was through that entity her debts were consolidated and put into repayment. (FORM, Item 3 at 5)

At issue in the SOR is a 2004 Chapter 7 bankruptcy discharge and 24 debts, noted at 1.a through 1.y, respectively. The debts range from \$25 to a delinquent Federal tax balance of about \$5,670. They include obligations related to medical accounts, taxes, personal loans, credit cards, and a vehicle repossession. In total, the debts at issue amount to nearly \$25,000. Applicant initially wrote that her financial problems began when she hired a lawyer for her 2003 divorce and subsequent child custody battle. (FORM, Item 3 at 6) She later attributed her financial distress to a stagnant income level and increasing expenses. She submitted copies of letters contacting some lenders regarding her situation or requesting repayment plans, mostly dated 2013. No documentary evidence, however, was provided showing any payments were made toward resolving her obligations, although wage garnishment has been imposed to address some of her debt. Her most recent credit report, from November 2015, continues to adversely reflect several of the delinquent debts at issue.

Applicant has more recently incurred medical debt, although its origin is unexplored. (Response to the FORM at 1). She recently found a new part-time job, which is not identified. She is looking for a better paying position. She has also taken in a roommate to help meet her rent responsibilities. She recently made inquiries through her organization regarding a 2014 state tax lien in an attempt to help clear up her security clearance issues. (Response to the FORM at 2) She also submitted copies of seven money order receipts, most of them for \$10, but it is unclear as to what lenders received the purported payments. In addition, she submitted a notice of tax lien and demand for payment from her state, dated November 2015, for taxes due in December 2015. She wrote in 2013 that she was currently making payments on her state taxes for 2009 through 2011 through her work, but provided no documentary evidence that such on-going payments were made and the tax liabilities satisfied.

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. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The 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." All available, reliable information about the person should be considered 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 not drawn 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, 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

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.

The Government introduced credible evidence showing Applicant has incurred considerable delinquent debt following a 2004 Chapter 7 bankruptcy discharge. At present, her debt amounts to almost \$25,000, including delinquent taxes. This is sufficient to invoke two of the 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 cited to an overall debt repayment plan through a consolidation entity, but failed to provide documentation regarding that plan, consistent payments through that plan, and any signs of progress. Moreover, she provided scant documentary evidence reflecting any other consistently applied form of progress on the tax owed and delinquent debts at issue. She provided no information indicating that her finances have improved, other than to cite to the recent acquisition of a new part-time job and a new roommate to help meet her present financial needs. While Applicant has received financial counseling, there is no evidence it was necessarily beneficial. There is no documented evidence that she is no longer in financial distress or that she has implemented safeguards to prevent further financial difficulties from occurring.

While Applicant cites to medical bills, their origin is unknown. Therefore, it cannot be determined whether they were due to unforeseen circumstances. There is no indication she has had any break in employment since at least 2005. Indeed, despite that period of continuous employment, she apparently has failed to devise, implement, and document a workable plan to address her debts in order to work toward financial stability. Finally, there is no indication she disputes any of the debts at issue. At best, the evidence shows that, at one or more times, she has contacted some of her creditors. Therefore, I find that, at best, AG ¶ 20(d) applies in part. Otherwise, none of the mitigating conditions set forth at AG ¶ 20 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 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) sets forth the need to utilize a whole-person evaluation.

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. A divorced mother of one adult child, Applicant's 2004 bankruptcy was apparently used to clear up debt related to her divorce and custody battle. She has been continuously employed in the information technology sector since 2005. Since that time, however, she has acquired almost \$25,000 in new delinquent debt. While some efforts have been exerted to address her obligations, none have been consistently applied or fruitful.

Applicant lacks a clear and reasonable plan for addressing her debts, dealing with her creditors, or for working toward the satisfaction of her debts. While a new part-time job and roommate may prove to be beneficial, they have yet to yield demonstrable benefits. This process does not require that an applicant show she has addressed all of the debts and issues set forth in the SOR. It is, however, expected that an applicant provide documentary evidence reflecting that she has devised a workable plan to address her financial issues, and that she has successfully implemented that plan. Without this type of documentary evidence, financial considerations security concerns remain sustained.

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.y:	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