



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



In the matter of:)	
)	
)	ISCR Case No. 14-06288
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. She is delinquent on a judgment, 19 collection accounts, and six charged-off accounts, which total more than \$26,000. There is no showing of payments having been made on the debts. Additionally, when completing a security clearance questionnaire she failed to list any derogatory financial information including two repossessed vehicles. Applicant failed to mitigate the financial considerations and personal conduct security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 26, 2015, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On

¹ 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.

March 2, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated July 30, 2015. The FORM contained eight attachments (Items). On September 1, 2015, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. As of November 6, 2015, no response or documents had been received. On December 1, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admitted 20 of the delinquent accounts and is unsure about the other seven, but indicated she would investigate those seven debts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 46-year-old machinist who has worked for a defense contractor since May 2013 and seeks to obtain a security clearance. (Item 4) She was unemployed for 21 months from November 2008 through May 2010, and was unemployed for three months from February 2013 through April 2013, when she obtained her current job. (Item 4) She provided no information about her duty performance and provided no character reference letters. She is separated from her husband and has three children ages 23, 26, and 27. (Item 4)

Applicant has an unpaid 2007 default judgment (SOR 1.n, \$1,032) documented by court records. (Item 7) There is one \$35 unpaid medical debt (SOR 1.l), 19 unpaid collection debts, and six delinquent charged-off accounts. Her unpaid delinquent obligations total more than \$26,000. The delinquent debts are shown in her May 2013 and October 2014 credit reports. (Items 5, 6)

In Applicant's June 18, 2013 Personal Subject Interview (PSI), she was questioned about 22 of the delinquent accounts. (Item 8) She acknowledged her financial situation was poor. (Item 8) At the time she completed her PSI, she indicated she was unaware of the majority of the accounts. She stated she would attempt to make repayment arrangement by July 2014. (Item 8) She indicated she hoped to have a debt resulting from a repossessed vehicle paid off by March 2015. Applicant presented no documentation showing payment on any of her delinquent obligations.

Applicant was put on notice in the FORM that she could submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanations. The FORM also indicated that she had provided no evidence of her efforts to repay or otherwise resolve her financial delinquencies. She provided no information concerning financial counseling or documents establishing her finances are under control. She provided no indication as to her annual or monthly income or expenses.

When Applicant completed her May 2013 Electronic Questionnaires for Investigations Processing (e-QIP) she failed to indicate she had two vehicles

repossessed, had a judgment, and numerous delinquent accounts. She asserts she was unaware of her delinquent obligations since the debt information would have been mailed to her spouse at a different location. She also asserts she was receiving no collection calls or letters demanding payment on past-due or collection accounts. She stated she did not list “all” of her collection accounts because she was unaware of specific information on the collection accounts. (Item 8) In fact, she failed to indicate any financial delinquencies on her e-QIP. (Item 4) In June 2013, the month after she completed her e-QIP, she obtained a copy of her credit report. (Item 8)

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 must be considered 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 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 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. 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 safeguard 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 (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or 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 his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant has an unpaid judgment and 26 other delinquent charged-off and collection debts totaling more than \$26,000. Even the three delinquent debts of less than \$75 each and two others of less than \$175 each have yet to be paid. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

None of the mitigating factors for financial considerations extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. She has been employed with her current employer since May 2013, yet even the smaller debts have not been addressed. It is recognized that from 2008 through 2010, she was unemployed for 21 months, which adversely affected her finances. She acknowledges her financial situation is poor.

In June 2013, Applicant was made aware of the Government's concerns about her delinquent debt when the majority of her delinquent obligations were discussed during an interview. At that time, she acknowledged some of the debt, did not recognize some of it, and stated that the following month she intended to contact the creditors and arrange to pay her delinquent obligations. There is no evidence she did so. She has not acted responsibly in addressing her debts.

Applicant provided no evidence she has received credit or financial counseling. She has provided no information as to her annual income, annual expenses, or demonstrated that her financial problems are under control. She has not shown she has a plan to bring her delinquent obligations under control. Without any payments having been established, she has failed to show she has made a good-faith effort to satisfy her debts.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. In June 2013, she was put on notice of the Government's concern over her delinquent obligations. In the two and a half years since her interview, she has failed to document a single payment on her delinquent obligations. Given sufficient opportunity to address her financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) has very limited application. She is currently separated from her husband and has had periods of separation and reconciliation with him in the past. In 2013, she was unemployed for three months and more than five years ago, she was unemployed for more than 21 months. However, she provided no information as to the impact of these periods of unemployment have on her current ability to address her delinquent financial obligations.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. There is no clear showing that her financial obligations are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because Applicant has failed to document payment on any of the delinquent accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because none of the delinquent obligations have been denied and no documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue has been presented.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

When Applicant completed her May 2013 e-QIP, she failed to list her repossessions or any derogatory financial information. She indicated she was not getting any calls or letters demanding payment of delinquent obligations. She indicated the mail was going to her husband at a different location, and she did not list all her collection accounts because she did not have specific information on the accounts. She may not have known about "all" of her delinquent accounts, but knew she had sufficient financial problems to alert the Government as to some of her delinquent obligations. Additionally, she knew about two vehicle repossessions and failed to list them on her e-QIP. AG ¶ 16(a) applies.

The guideline includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not provide truthful information about her finances until specifically questioned about each one during her June 2013 PSI. AG ¶ 17(a) does not apply. Failing to provide truthful and complete information on a security clearance application is never a minor offense. Her untruthful answers cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply.

Applicant's concealment of relevant and material information demonstrates a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself or herself provides an indication of their willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests she is willing to put her personal needs ahead of legitimate government interest. I resolve Guideline E, personal conduct, against Applicant because she knew of the repossessions and that she had some delinquent accounts.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has failed to document any payment on her delinquent accounts. She has been aware of the Government's concern about her delinquent debts since her June 2013 PSI, her January 2015 SOR, and the July 2015 FORM. No delinquent debts have been paid and there is no documentation she has recently contacted her creditors.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances and facts that could potentially mitigate the financial considerations security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debt. She failed to provide such information, and by relying solely on the scant explanation in her response to the SOR, she failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of 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, a clearance is not recommended. In the future, if Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her past-due obligations, she may well demonstrate persuasive evidence of her security worthiness. Additionally, she should have revealed her repossessed vehicles and at least some of her delinquent accounts on her e-QIP. A clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or personal conduct security concerns.

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, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.aa: **Against Applicant**

Paragraph 2, Personal Conduct: **AGAINST APPLICANT**

Subparagraph 2.a:

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.

CLAUDE R. HEINY II
Administrative Judge