



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



In the matter of:)
)
) ISCR Case No. 14-03943
)
Applicant for Security Clearance)

Appearances

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

12/31/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On October 30, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 22, 2014, and January 9, 2015, and elected to have her case decided on the written record. On June 22, 2015, Department

Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and it was received on July 17, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and Items 4 through 6 are admitted into evidence. No additional material was provided by Applicant. The case was assigned to me on December 9, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations except ¶ 2.a, which she admitted with an explanation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. She attended college, but did not earn a degree. She married and was divorced in 1997. She remarried in 1997 and divorced in 2000. She remarried in 2000 and divorced in 2010. She remarried in 2010 and is separated from her husband. Applicant has three children, ages 9, 10 and 12. She has been employed by a federal contractor since August 2013. She was unemployed for four months in 2013. Before then she worked at various jobs, the longest term from October 2001 to December 2010.¹

Applicant completed a security clearance application (SCA) on September 19, 2013. In response to question 26, which inquired if in the past seven years Applicant had bills or debts turned over to a collection agency or if she was 120 days delinquent on any debt, she responded "no." During her background interview in December 2013, she was confronted with the numerous delinquent debts on her credit report. She explained her knowledge of financial affairs was extremely limited due to the loss of her financial records and documents because of household moves, marital disputes, and poor record keeping. She did not know the specific amounts of each delinquent debt. When asked why she responded "no" to the SCA inquiry about delinquent debts she indicated it was a mistake and she did not understand financial terms.²

The government investigator confronted Applicant about the delinquent debt in SOR ¶ 1.a (\$6,323), which is a loan for a repossessed vehicle. She acknowledged she and her ex-husband purchased the vehicle and due to insufficient funds she was unable to make the payments and the vehicle was repossessed. She also acknowledged to the investigator that due to insufficient funds, she was unable to pay her student loans (SOR ¶¶ 1.bb through 1.gg). She acknowledged that she had rented an apartment, but

¹ Item 3.

² Items 3, 6. Applicant also answered "no" to whether she had a judgment entered against her; whether she was currently delinquent on any federal debt; whether she had any possessions or property voluntarily or involuntarily repossessed or foreclosed; whether she had any account or credit card suspended, charged off, or canceled for failing to pay as agreed. I have not considered these answers for disqualifying purposes, but will consider them when analyzing Applicant's credibility and in my whole person analysis.

was unable to pay the rent while residing there. The debt in SOR ¶ 1.b (\$5,296) reflects this debt.³

During the interview, Applicant attributed her financial problems to insufficient wages and the expenses associated with her child who has a heart defect. She indicated that even when she had medical insurance, she was unable to pay the medical expenses that were not covered. She stated that some of the debts are her ex-husband's responsibility with whom she had joint accounts and became jointly liable. She also acknowledged she is an impulse spender and did not budget money properly.⁴

In 2007, Applicant had approximately \$53,000 of delinquent debt discharged in a Chapter 7 bankruptcy. She indicated she filed bankruptcy because she earned insufficient wages, had medical expenses, and was unable to make timely payments on her debts. Applicant admitted the delinquent debts alleged in SOR ¶ 1.a through 1.kk, totaling approximately \$58,907. During her background interview in December 2013, she indicated that after her debts were discharged in bankruptcy, she continued to struggle financially and have medical problems. She further stated she was still unable to meet necessary living expenses and make timely payments to creditors.⁵

In her answer to the SOR, Applicant indicated she was making payments on the debts alleged in SOR ¶¶ 1.bb through 1.gg, which are student loans that total approximately \$12,019. She did not provide any supporting documents to show she has a payment plan, or the debts are no longer delinquent and are being paid. The debts alleged in SOR ¶¶ 1.e -1.i, 1.l, 1.n, and 1.p-1.x, are medical debts totaling \$5,464. The remaining \$41,424 of delinquent debts alleged in the SOR are various consumer accounts. Credit reports from July 2014 and December 2013 reflect Applicant's delinquent accounts alleged in the SOR.⁶

It is not believable that Applicant made a mistake when she answered "no" to questions about whether she had past due or delinquent debts. She admitted she struggled to pay her living expenses and make timely payments to creditors after her bankruptcy. It is clear she knew she was not paying the full amount on her medical debts. She had two vehicles repossessed because she was unable to make the payments on them. She acknowledged she was responsible on joint accounts that were unpaid. I find Applicant intentionally failed to disclose financial delinquencies on her SCA.

³ Items 4, 5, 6.

⁴ Item 6.

⁵ Item 6.

⁶ Items 4, 5; Answer to the SOR.

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 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. Likewise, I have avoided drawing 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 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 that an applicant may deliberately or inadvertently fail to 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 conditions that could raise security concerns. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had approximately \$53,000 of debt discharged in bankruptcy in 2007. Since then, she has accumulated 37 delinquent debts totaling more than \$58,000, which include two judgments and six delinquent student loans that she is unable or unwilling to pay. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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.

Applicant attributes her financial problems to insufficient wages and her child's medical issues. These issues are beyond her control. She also indicated that she has delinquent accounts, held jointly with her ex-husband, which have caused her financial problems. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant had a clean financial slate after her debts were discharged in bankruptcy in 2007. She indicated after the bankruptcy she did not have sufficient wages to pay her living expenses and make timely payments to creditors. She did not provide evidence of actions she may have taken to budget her finances or manage her finances. She did not provide sufficient evidence of actions she has taken regarding any of her delinquent debts. AG ¶ 20(b) partially applies.

Applicant indicated in her answer to the SOR that she was making payments on her student loans. She failed to provide documents to substantiate her statements. She did not provide evidence of a good-faith effort to resolve her delinquent debts. There is insufficient evidence to conclude her financial problems are being resolved or are under control. AG ¶ 20(c) and 20(d) do not apply. Applicant's debts are numerous and there is insufficient evidence to conclude her financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. Applicant does not dispute any of the debts. AG ¶ 20(e) does not apply.

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. I find the following 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.

Applicant had debts discharged in bankruptcy in 2007. She admitted that shortly thereafter she was still unable to pay her living expenses and make timely payments to creditors. She indicated she did not budget her money properly, and she was an impulse spender. Applicant was aware that she voluntarily returned two vehicles to creditors because she could not make the payments on the loans. She was aware that she could not pay all of her family's medical expenses. In response to why she failed to disclose she had any delinquent debts, she indicated it was a mistake, and she did not understand financial terms. I find her explanation is not credible. Applicant was aware her debts were discharged in bankruptcy and she still was earning insufficient income to pay all of her debts. Although she may not have been aware of the specific dollar amount she owed each creditor, she was aware that some accounts were not being paid timely. I find Applicant intentionally omitted, concealed, or falsified this information on her SCA. The above disqualifying condition applies.

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

- (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's conduct was not minor, and did not happen under unique circumstances. Her confirmation of her delinquent debts when the government investigator confronted her with them does not constitute a prompt, good-faith effort to correct her omissions, concealments, or falsifications. Applicant had a duty to place the government on notice that she had financial problems, an issue she was aware of when she completed her SCA. She intentionally failed to disclose any derogatory financial information. I cannot find this behavior is unlikely to recur. Her actions cast doubt on her reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(c) do 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 36 years old. She had a significant amount of debts discharged in bankruptcy in 2007. She continues to have financial problems and has numerous unpaid delinquent debts. She intentionally failed to disclose her financial problems on her SCA. Applicant failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

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-1.1l:	Against Applicant
Paragraph 2, Guideline E:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge