



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04734

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

04/15/2016

Decision

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

Statement of the Case

On December 2, 2014, 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 February 17, 2015, answer to the SOR, Applicant admitted the six allegations raised, noted brief comments, and requested a determination based on the written record. On December 2, 2014, the Government issued a File of Relevant Material (FORM) with eight attachments ("Items"). Applicant did not respond to the FORM. The case was assigned to me on April 12, 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 57-year-old technician who has worked for the same defense contractor since 1985. Widowed in 2004, she is the mother of two adult children. She attributed the origin of her financial difficulties to the time when she was widowed and

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.

her household income was reduced to one salary. (FORM, Item 4 at 3-4) There is no documentary evidence indicating she has received financial counseling. At issue are four delinquent debts amounting to about \$3,050, as well as a failure to file Federal Income tax returns for tax years (TY) 2011 and 2012, and a failure to pay her TY 2006 Federal Income taxes.

With regard to the four delinquent debts at issue, Applicant wrote that she had paid off a settlement on the debt noted at SOR allegation 1.c (\$150) on February 15, 2014. She also wrote that she had paid off, pursuant to settlement, the debts noted at 1.d-1.e (\$542, \$1,610) in May 2014. In addition, she wrote that the past-due balance noted at 1.f (\$751) owed on a loan of \$10,152 was “caught up” and that the total balance on the loan is now \$7,986. However, she provided no corroborating documentary evidence concerning any of these alleged actions.

Regarding SOR allegation 1.a, Applicant wrote that she will be filing the Federal Income tax returns for TY 2011 and 2012. She also wrote that she was making an agreement related to her past failure to pay Federal Income taxes for TY 2006, as set forth at SOR allegation 1.b². Again, however, she provided no documentary evidence supporting her assertions that any progress on these tax obligations was made.

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.” All available, reliable information about the person, past and present, favorable and unfavorable, 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.

² Applicant wrote that she had been in a settlement repayment plan, but provided no documentary evidence of either the plan or any payments. (FORM, Item 4 at 3)

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.

Here, the Government introduced credible evidence showing Applicant failed to file Federal Income tax returns for two years, failed to pay her Federal Income taxes for one year, and had approximately \$3,050 in delinquent debts. This is sufficient to invoke three of the financial considerations disqualifying conditions:

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

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

AG ¶ 19(g) failure to file Federal tax returns.

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 provided no documentary evidence reflecting progress on any of the tax issues or delinquent debts at issue. She provided no information indicating that her finances have improved, that she has received financial counseling, or that safeguards have been implemented to prevent further financial difficulties from occurring. While she attributes her present financial distress to the time she was widowed and the subsequent reduction in household income, that occurred in 2004. Despite nearly a dozen years of subsequent and continuous employment, however, she apparently has failed to devise, implement, and document a workable plan to address her debts. Finally, there is no indication she disputes any of the debts at issue. Therefore, I find that none of the mitigating conditions set forth at AG ¶ 20(a) and AG ¶ 20(e) 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). 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. Widowed in 2004, the 57-year-old Applicant experienced a drop in household due to the loss of her husband. This occurred in the middle of her period of continuous employment as a technician with the same defense contractor, which has lasted since 1985. She has raised two children.

Overall, Applicant provided insufficient documentation to establish that she has expended any positive effort toward addressing her delinquent debts and tax issues. In these proceedings, the burden is on the applicant to provide such documentary evidence. An applicant is not required to show she has addressed all of the debts and issues set forth in the SOR. It is, however, expected that an applicant provide such 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
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Subparagraphs 1.a-1.f:	Against Applicant
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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