



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



In the matter of:

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) ISCR Case No. 14-05696
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Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

09/17/2015

Decision

DAM, Shari, Administrative Judge:

Applicant has been unable or unwilling to resolve 24 of 28 alleged delinquent debts. She failed to present sufficient evidence to mitigate the financial security concerns. She mitigated the personal conduct issues relating to her failure to disclose delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

On January 28, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) for reinvestigation. On December 12, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the

Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On February 20, 2015, Applicant answered all allegations in Paragraph 1 of the SOR and requested a hearing (Answer). On March 18, 2015, she submitted an answer to the allegation contained in Paragraph 2 of the SOR. On April 27, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 5, 2015, DOHA issued a hearing notice, setting the case for July 1, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 10 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through E into evidence. All exhibits were admitted without objection. The record remained open until July 21, 2015, to give Applicant time to submit additional information. Applicant timely submitted one exhibit with 12 pages that I marked as AE F, and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on July 9, 2015.

Findings of Fact

Applicant admitted 13 of the SOR allegations contained in Paragraph 1 of the SOR, and denied the remaining 15 allegations. She denied the allegation in Paragraph 2 of the SOR. Her admissions are accepted as factual findings.

Applicant is a 56-year-old employee of a defense contractor, where she has worked since September 2011. She has two adult children from her first marriage, which ended in 2006. She married her second husband in 2007 and has a stepson. She and her husband separated in 2014. She completed a master's degree in May 2014. She worked as a federal government employee from the time she was 17 years old until 2002. Subsequently, she worked for other defense contractors. She has held a security clearance for many years during her employment. Prior to obtaining her current position she was unemployed for 18 months.¹ Her husband was unemployed from May 2010 to June 2013. (Tr. 23-27.)

Applicant attributed her financial problems to the long period that she and her husband were unemployed. She said that during that period she also cared for her sick mother and recuperated from her own surgery, which contributed to the financial issues. She testified that said period was extremely stressful for her. (Tr. 29; GE 2.)

Applicant has a history of financial problems, dating back to at least 1996. In January 2014 she completed Interrogatories requested by the federal government. She addressed questions regarding judgments from 1996 and 1997, and a 2001 garnishment and provided proof that the matters were resolved.²

¹During an interview in February 2013, Applicant told an investigator that she was unemployed from May 2011 to August 2012. (GE 2.) In her Answer, she said she was unemployed from March 2010 to September 2012. (Answer.)

²The SOR does not allege these previous matters. Any matters that were not alleged will not be

Based on credit bureau reports, from February 2013 and March 2008, the SOR alleged 28 delinquent debts, which became delinquent between 2008 and 2013, and totaled \$78,560. They include judgments, credit card debts, unpaid medical bills, a defaulted car loan, and unpaid cell phone debts. (GE 4, 7.) A summary of the status of the debts follows.

Applicant is resolving four SOR-alleged debts. The judgment listed in SOR ¶ 1.j for \$11,751 is being paid and resolved through a garnishment. The balance is \$555. (AE F.) The debt listed in SOR ¶ 1.aa appears to be a duplicate of the judgment. (Tr. 74.) The debt listed in SOR ¶ 1.r for \$1,126 is owed to a department store. She is settling the debt for \$401 and made her first payment of \$66 in July 2015. (AE F.) She is litigating the \$29,863 debt listed in SOR ¶ 1.x. It relates to a secondary mortgage that she and her husband obtained for their residence. (Tr. 60; AE B.) These debts total \$53,783.

Applicant asserted that some of the other 24 debts are paid, or are not her debts, and could be her mother's debts. She also said that some could be her sister-in-law's debts because she shares the same name as Applicant. She stated that some are duplicates, and she has no knowledge of one or two debts. She acknowledged owing many of the medical debts. She did not present credible evidence verifying her assertions or that any of the 24 delinquent debts are resolved, being resolved, are duplicates, or were successfully resolved in her favor after formally disputing them.

Applicant's annual salary is \$74,000. She does not have a budget and has not participated in credit or financial counseling. (Tr. 34, 36.) Applicant and her husband owe federal taxes for 2014.³ She does not know the amount because her husband is paying the debt. (Tr. 38.) Applicant's student loans, which total about \$85,000, are deferred. She may go back to school in the fall. (Tr. 78.)

In addition to the financial security concerns raised in the SOR, the Government also alleged that Applicant intentionally falsified her 2013 e-QIP because she did not disclose the SOR-listed debts, which were over 120 days old, as requested. She did disclose her mortgage problem. (GE 1.) In her Answer, Applicant denied that she intentionally attempted to deceive the Government. While testifying, she said that when she completed the e-QIP in January 2013, she was not certain she was mentally stable, having lost her mother and sister within the previous six months. She said she was unemployed at the time, and unsure of her financial state. She reiterated that she was not attempting to hide information. (Tr. 75.)

considered in an analysis of disqualifying conditions. They may be considered in my analysis of mitigating conditions and the whole- person concept.

³ The SOR does not allege unpaid taxes and will not be considered in an analysis of disqualifying conditions. They may be considered in my analysis of mitigating conditions and the whole-person concept.

Applicant testified honestly. She submitted her 2014 performance evaluation. It recorded her performance as “Significantly Exceeded Commitments.” (AE C.) Her composite rating score was “4.4/5.0.” (AE C.)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's financial delinquencies began before 2008, and most of them remain unresolved. Since then she has been unwilling or unable to resolve most of the delinquent debts. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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's financial problems have been ongoing since before 2008 and continue to date; hence, AG ¶ 20(a) does not provide mitigation. There is evidence to indicate that Applicant's and her husband's long periods of unemployment, which spanned from May 2010 to September 2013, were circumstances beyond her control. However, she did not explain what steps she took from 2008 to 2013 to responsibly manage her financial obligations as they accumulated. Hence, AG ¶ 20(b) provides minimal mitigation. Applicant has not participated in financial or credit counseling, and does not have a budget or reasonable plan to address the unresolved debts. The evidence does not demonstrate that her finances are under control. AG ¶ 20(c) does not apply.

AG ¶ 20(d) does not provide mitigation for 24 of the alleged 28 debts, as Applicant did not provide sufficient evidence that she initiated or adequately made a good-faith effort to address them. Normally, resolving debts through garnishments is not considered "a good-faith effort" to repay creditors. However, in this instance Applicant's garnishment is almost paid, which establishes some mitigation under AG ¶ 20(d) for the debt alleged in SOR ¶ 1.j. (The debt is also alleged in SOR ¶ 1.aa.) She recently made a good-faith effort to resolve the debt in SOR ¶ 1.r, establishing some mitigation under AG ¶ 20(d) for that debt. Applicant is legally disputing the \$29,863 debt SOR ¶ 1.x. Hence, AG ¶ 20(e) has application to it. She did not provide evidence to substantiate other debts she stated likely did not belong to her or which she successfully disputed.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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 a condition that could raise a security concern and may be disqualifying in this case:

(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.

The Government alleged in SOR ¶ 2(a) that Applicant falsified her 2013 e-QIP by failing to disclose her delinquent debts, thereby raising a potential disqualification under AG ¶ 16(a).

Applicant denied the allegation. She attributed the omission to her state of mind at the time she submitted the e-QIP. She said she was stressed and not thinking clearly as a consequence of personal issues. After listening to her testify and observing her demeanor, I find her explanation credible. She disclosed an adverse mortgage problem, and freely spoke of her problems during the personal appearance. Her failure to disclose the information does not appear to be the result of an intentional action, but rather a negligent one. This guideline is found in her favor.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is an intelligent and educated 55-year-old employee of a defense contractor, who has held a security clearance while working for the Government for many years. Her 2014 performance evaluation is impressive.

While those are favorable facts to consider in granting her a clearance, Applicant has a long history of financial problems, which date back to 1996. While some of the more current delinquent debts are attributable to a period of unemployment, she has not demonstrated responsible management of her finances and debts from 2008 to the present. Without a reasonable budget and solid plan for resolving these problems, there is a strong likelihood that similar issues will recur and call into question her judgment. Overall, the record evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k through 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraphs 1.s through v:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y and 1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant
Subparagraph 1.bb:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge