



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 15-00821

Appearances

For Government: Benjamin R. Dorsey, Esquire, Department Counsel

For Applicant: *Pro se*

03/09/2016

Decision

DAM, Shari, Administrative Judge:

Applicant owes more than \$12,000 in unresolved medical debts that she incurred between 2009 and 2014. She did not provide sufficient evidence that she is resolving the debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On August 14, 2014, Applicant submitted a security clearance application (SF-86). On September 18, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on October 7, 2015 (Answer), and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On November 18, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on said date, and received by her on December 1, 2015. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. She timely submitted an exhibit that I marked as Applicant Exhibit (AE) A and admitted into the record without objection from Department Counsel. Applicant did not submit any objections to the Government's Items; hence, Items 1 through 6 are admitted into evidence. DOHA assigned the case to me on January 7, 2016.

Findings of Fact

In her Answer Applicant admitted all of the 40 allegations contained in Paragraph 1 of the SOR, except, 1.k and 1.o, which she denied because she was unable to confirm the two creditors. (Item 2.) Her admissions are incorporated into these findings of fact.

Applicant is 30 years old, and married for the second time in 2010. She has a 7-year-old daughter and an 11-year-old stepchild. She earned an associate's degree in 2011. Since 2014 she has worked for a federal contractor. She is a designer. She was unemployed for two months in 2012 and three months in 2013. (Item 3.)

Based on credit bureau reports (CBRs) from August 2014 and August 2015, the SOR alleged 40 delinquent medical debts, which totaled \$12,747. The debts became delinquent between 2009 and 2014. (Items 5, 6.) Applicant disclosed many of the medical debts in her August 2014 SF-86, and stated that she could not pay them because she had lost her job and did not have medical insurance at the time they were incurred. (Item 3.)

In her October 2015 Answer, Applicant noted that 34 of the 40 debts were in one of two payment plans that she established. She is researching the other six debts. (Item 2.) In her response to the FORM, she stated that one payment plan includes 12 delinquent debts (Plan A), and the other payment plan includes other delinquent debts (Plan B). She submitted some evidence that she made two payments to Plan A: \$100 in October 2015 and \$100 in December 2015. She made two payments to Plan B: \$50 in November 2015 and \$68 in December 2015. She also paid another medical debt for \$83. (AE A.) Those four payments total \$318. She did not submit documentation verifying when she entered into the payment agreements; which debts were included in each plan; or the balance of each payment plan.

Applicant said she intended to pay all of her debts. She indicated that many of her family members have served in the military. She loves this country and her job, which supports the military. (AE A.)

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(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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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 in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

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 has a history of delinquent debt. From 2009 to 2014, she accumulated 40 delinquent accounts totaling over \$12,000. Her ongoing pattern of delinquent debt, and history of inability or unwillingness to pay lawful debts, raise security concerns under the above disqualifying conditions, and shift 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 financial difficulties:

- (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;

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 delinquent debts have been ongoing since 2009, remain unresolved, and cast some doubts about her reliability. The evidence did not establish mitigation under AG ¶ 20(a). She provided evidence that she accumulated the delinquent medical debts because she did not have medical insurance at the various times she sought treatment. That was a circumstance beyond her control. However, in order to establish full mitigation under AG ¶ 20(b), she needed to produce evidence that she acted responsibly under those conditions, which she did not do. Nor did she submit evidence of financial counseling, a budget, or other information from which to determine a track record of debt resolution and show indications that her financial problems are under control. Hence, AG ¶ 20(c) does not apply. She submitted evidence that in October, November, and December 2015, she paid \$318 on two debt repayment plans and \$83 on another medical debt, indicating that she is trying to initiate a good-faith effort to resolve her debts. AG ¶ 20(d) has some application. Although she denied two debts, she did not provide evidence that she formally disputed them, which evidence is necessary to establish mitigation under AG ¶ 20(e.).

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 a mature adult, who has worked for a federal contractor since 2014. The SOR listed 40 delinquent medical debts that arose between 2009 and 2014, of which Applicant stated 34 are consolidated into two separate payment plans. Based on the information she submitted, those plans were initiated in October 2015, a month after she received the SOR. However, she did not provide any documentation about the plans and their terms, or which SOR-debts are included in the plans. While she took important steps toward resolving the debts, she has not yet established a track record of resolving debt or provided a budget demonstrating an ability to continue addressing them. There is no evidence of financial counseling or that any of the SOR-listed delinquent debts are resolved, including eight small debts for under \$60. The potential for pressure, coercion, and duress from her financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from her financial considerations.

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
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Subparagraphs 1.a through 1.nn:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge