



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



In the matter of:)
)
) ISCR Case No. 17-04166
)
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

12/20/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 23, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017 (AG).

Applicant answered the SOR on May 25, 2018. She elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 28, 2018. The evidence

included in the FORM is identified as Items 3-9 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on July 24, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On September 5, 2018, Applicant's counsel entered his appearance, filed a written response to the FORM (FE I), and submitted exhibits (AE) A-D. Applicant did not object to the Government's evidence and Items 3-9 are admitted.¹ Applicant exhibits are also admitted without objection. The case was assigned to me on December 12, 2018.

Findings of Fact

Applicant denied all the allegations in the SOR. After a careful review of the pleadings and evidence, I make the following findings of fact.

Applicant is 45 years old. She has worked for a federal contractor since February 2016 as a translator at an overseas location. Her previous employment was in the private sector. She experienced periods of unemployment from 2009 to 2013, and from 2006 to 2008. She was married for the second time in 2007, although she claims she is currently separated from her husband. Her first marriage was from 1991 to 2004. She has three adult children from this marriage. She has two children from her current marriage. She is a high school graduate.²

The SOR alleged Applicant has 12 charged-off and collection accounts in the total amount owed of approximately \$14,466. The allegations are supported by credit reports from April 2018, November 2017, March 2017, and February 2016.³

Applicant explained in her SOR answer and FORM response that the nine medical collection debts (SOR ¶¶ 1.a, 1.b, 1.f-1.i, and 1.k-1.m) were disputed because she had insurance during that time that should have paid these debts. She pointed out that all but two of these debts no longer appeared on her latest credit report. The remaining two that still remain (SOR ¶¶ 1.a and 1.b) are of minimal security significance. I find for Applicant concerning all the medical accounts.⁴

¹ Applicant's counsel made two objections to the FORM. First, he states that the FORM erroneously refers to Guideline E when it should refer to Guideline F (FORM p. 2, para. 2). That objection is sustained and the correct reference should be Guideline F. I will consider the language as referring to Guideline F. Second, Applicant's counsel objects, based on relevance, to Department Counsel arguing about past debts not alleged in the SOR (FORM p. 3, para. 3). I will not consider any unalleged debts for disqualification purposes, but I will consider such information as it may relate to the application of any mitigating conditions and the whole-person factors. To that extent, the objection is sustained.

² Item 3.

³ Items 2, 4-6.

⁴ Items 2, 6-9; FE I.

The three remaining delinquent accounts are from credit cards (SOR ¶¶ 1.c-1.e). Applicant denied these debts because she claimed that they all were opened by her husband using her credit information, social security number, and other personal identifying information without her permission. She stated that because of her religion and culture, she had no right to question her husband's handling of their finances or use of the credit cards. She acknowledged during her background interview that she was a cosigner on the accounts. Credit reports also show that the two largest credit card delinquencies were opened before her marriage to her current husband. She claims that she is separated from her husband and has made efforts to contact the creditors to remove the accounts from her name. She failed to provide documentation supporting these assertions. Her bank account statements from August 2018 indicated that her husband remains named on their checking account. All these accounts remain unpaid and are unresolved.⁵

Applicant submitted several character letters in support of her receiving a clearance. Four were from personnel related to her current position. Applicant is described as loyal, professional, honest, and patriotic by those who worked with her as a translator. Two letters were also provided by supervisors in her private sector employment where she was described as professional and loyal.⁶

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(a), 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 national security eligibility 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.

⁵ Items 2, 6-9; FE I; AE D.

⁶ AE A.

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. 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of 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

AG ¶ 18 expresses the security concern for financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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 these mitigating conditions fully apply. Applicant's debts are recent and remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. She did not substantiate that she is separated from her husband and that he no longer has any influence over her finances. AG ¶ 20(a) does not apply. Applicant's husband's unauthorized use of her credit and resulting debt may be considered a condition beyond her control, however, she failed to take responsible actions to address her resulting debts by substantiating that she has separated herself from his control. I find AG ¶ 20(b) partially applies. She addressed her medical debts, but the delinquent credit card debt remains. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) partially apply toward the medical debts. She failed to document her dispute of the credit card debt. AG ¶ 20(e) does 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(d):

(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 guideline 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 considered Applicant's translator duties in service to our military, and the circumstances that led to her financial difficulties. Applicant has not established a track record of financial stability.

Overall, 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.⁷

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.b:	For Applicant
Subparagraphs 1.c – 1.e:	Against Applicant
Subparagraphs 1.f – 1.i:	For Applicant
Subparagraphs 1.k – 1.m:	For Applicant

⁷ I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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.

Robert E. Coacher
Administrative Judge