



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



In the matter of:)
)
-----) ISCR Case No. 18-00235
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esquire, Department Counsel
For Applicant: *Pro se*

04/25/2019

Decision

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

Statement of the Case

On February 12, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ On March 5, 2018, she addressed all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The SOR was amended on April 10, 2018, and a response was timely filed. I was assigned the case on September 12, 2018.

A notice of hearing was issued on October 17, 2018, setting the hearing for December 6, 2018. The hearing was convened as scheduled. The Government offered 15 exhibits (Exs.), noted as Exs. 1-15. Applicant gave testimony and introduced one witness. The transcript (Tr.) was received on December 13, 2018. Based on the

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 or after June 8, 2017.

testimony, materials, and record as a whole, I find Applicant failed to mitigate security concerns under either guideline alleged.

Findings of Fact

Applicant is a 71-year-old administrative assistant. She has worked on various government contracts for over 25 years. She was first awarded a secret clearance in 2008. Applicant was unemployed for about a month in 2007. (Tr. 25) Once earning about \$60,000 a year, she now only earns about \$32,000 under her present contract. Applicant is a high school graduate who has completed some business school courses. She has two middle-aged children and her spouse is deceased. At issue is approximately \$37,000 in delinquent debts, and multiple theft-related offenses.

In 2010 or 2011, Applicant had a gathering at her home. After it was over, she discovered her “wallet and everything” was stolen. (Tr. 13-14) The police would not take a report because she had no idea who had stolen her wallet and there was no evidence of burglary. (Tr. 14) About three months later, she started getting calls about debts that were not hers. She wrote some of the creditors to apprise them of the situation. She also contacted some lending institutions with which she had bona fide debts.

In addition, Applicant signed for both a truck and an apartment for a friend facing hard times. The individual lost their job and left Applicant with two additional balances. ((SOR allegations 1.a (\$17,689) and 1.b (\$14,804)) Applicant learned that these debts were delinquent in 2018, after her credit report was generated. (Tr. 30) In January 2018, Applicant spoke with both creditors and was told they would be willing to reach a settlement, but no documentary evidence of such an offer or arrangement was introduced. (Tr. 14, 29-30, 34)

With regard to the delinquent debts reflected in the SOR from 1.c-1.l, Applicant asserts they are the product of identity fraud, the result of the identity theft that occurred during the above-referenced house party, although the evidence indicated the debt at 1.f pre-dates that event. (Tr. 40-41) Given the circumstances, she denies responsibility for the debts. (Tr. 15, 36-37) No formal disputes regarding these accounts have been documented. (Tr. 37-39) These debts amount to about \$4,725, arranged in size from \$57 to \$1,438, and include debts for such things as cable service, telecommunications service, and retail entities.

The SOR allegation at 1.m concerns a 1980 charge for four bad checks (misdemeanor) which led to a 60-day period of incarceration, suspended, and three months of probation. Applicant does not remember this incident and believes some of these related citations may be duplicative. (Tr. 42) A November 1981 charge was entered for forgery (felony) and bad check (misdemeanor), leading to a sentence of 16-18 months of incarceration, suspended, and two years’ probation. Subsequent charges for bad checks were issued in 1982, 1995 (felony), and 1997, followed by a 2001 charge of theft (misdemeanor) and shoplifting (misdemeanor). Overall, Applicant is confused with regard to these allegations and any related specifics. (Tr. 43) Applicant

noted that these related debts must have been satisfied for, had they not been honored, she would have been formally incarcerated. (Tr. 44-45) Applicant, however, had no documentary evidence regarding such payment to offer.

In March 2018, Applicant completed a security clearance application (SCA). She deliberately answered “no” in response to “**Section 25. Investigations and Clearance Record – Government Debarment:** ‘Have you **EVER** been debarred from government employment?’” In doing so, she failed to disclose she had been barred from competing in Office of Personnel Management (OPM) examinations or accepting appointments in the competitive Federal service from April 2, 1986, to April 1, 1988. She similarly deliberately answered “no” in response to “**Section 26. Financial Record – Delinquency Involving Routine Accounts:** ‘Other than previously listed, have any of the following happened? **In the past seven (7) years**, you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? **In the past seven (7) years**, you had bills or debts turned over to collection agency? **In the past seven (7) years**, you had any account of credit card suspended, charged off, or cancelled for failing to pay as agreed?’” This admitted denial was in contradiction to her answers in allegations 1,a, 1,d, and 1.i, above.

In addition, Applicant admitted she falsified material facts on an October 2010 SCA in answering “no” to “**Section 25. Investigations and Clearance Record – Government Debarment:** ‘Have you **EVER** had a clearance or access authorization denied, suspended, or revoked; or been debarred from government employment?,’” when she was, in fact, barred from competing in OPM examinations or accepting appointments in the competitive Federal service from April 2, 1986, to April 1, 1988.

On an August 2008 SCA, in response to “**Section 18. Your Investigations Record:** ‘To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment?,’” Applicant intentionally answered “no.” In doing so, she deliberately failed to disclose the fact she had been barred from competing in OPM examinations or accepting appointments in the competitive Federal service from April 2, 1986, to April 1, 1988.

In March 2016, Applicant completed another SCA. She falsified facts in its execution by answering “no” in response to “**Section 22. Police Record:** ‘Have you **EVER** been charged with any felony offense?’” Her falsity was based on her earlier charges for bad check and forgery, noted above. A similar falsity was committed by Applicant with regard to the same question on a SCA from October 2010.

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. 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 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 any 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.

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline F, Financial Considerations

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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant had numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance related security concerns posed here:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to 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.

There are multiple delinquent debts at issue, none of which were shown to be fully resolved or addressed. Many debts were the result of stolen credit cards or identification left unsecured by Applicant in her home during a party. While this has the potential of raising AG ¶ 20(b), Applicant failed to offer documentation reflecting that she acted responsibly under the circumstances to ameliorate the situation.

As for addressing the created delinquent debts at issue, it appears some are attributable to personal identity information and credit cards that were left unsecured during a house party, and to a reduction in pay. Applicant, failed, however, to show she acted responsibly at the time. Applicant stated that she has disputed some of her debts, but she provided no documentary material substantiating that claim.

There is no documentation reflecting Applicant has or is receiving financial counseling. There is no documentary evidence showing that any of her multiple bad

checks have been honored, although the fact she has never been formally incarcerated appears to indicate some degree of resolution was reached. Lack of documented progress reflecting that Applicant has resolved her delinquent debts, brought them under control, or otherwise resolved them does little to give rise to any of the available mitigating conditions. Consequently, none of the mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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 or sensitive information.

AG ¶ 16 describes conditions that could raise security concerns and may be disqualifying. Here, Applicant admitted making repeated falsifications on SCAs in 2016, 2010, and 2008. These falsifications, omissions, or obfuscations concerned past delinquent debts, a two-year debarment in the 1980s, and a past felony criminal record. Because these misleading answers were intentional and deliberate, the following disqualifying condition applies:

AG ¶ 16(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.

I find that the false and omitted facts, which Applicant admits were intentionally put forth, were done so in order to set herself in a better light. While Applicant is no doubt contrite, these admitted facts show a pattern that continued from 2008 through as recently as 2016. Insufficient facts were introduced indicating the security concerns raised by these egregious falsities to mitigate security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 71-year-old administrative assistant who has worked on various government contracts for over 25 years. A high school graduate who has completed

some college courses, she has had a secret clearance since 2008. Applicant was unemployed for about a month in 2007. Once earning about \$60,000 a year, she now only earns about \$32,000 under her present contract. She is a widow with two middle-aged children. She was subject to identity and credit theft at a house party she hosted several years ago, and believes, without corroborating documentation, that many of the SOR debts resulted from that incident.

Applicant provided no documentary evidence indicating she has implemented a plan to resolve her debts or made any progress toward addressing them. This includes multiple bad checks, although the fact she was not incarcerated tends to indicate those matters were somehow resolved. This process does not demand that an applicant pay all of one's delinquent debts. It does, however, expect an applicant to describe a workable and manageable agreement and demonstrate by documentary evidence that a meaningful track record of timely and notable payment has been established. Here, Applicant simply failed to provide any documentation regarding any efforts to resolve her delinquent debts.

Moreover, as for the multiple admitted falsifications on her past few SCAs, Applicant provided no documentation tending to mitigate personal conduct security concerns. In sum, Applicant failed to mitigate both financial considerations and personal conduct security concerns.

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.r:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.f:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge