



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



In the matter of:)
)
) ISCR Case No. 18-00388
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Her history of indebtedness and financial irresponsibility has not been mitigated. National security eligibility for access to classified information is denied.

Statement of the Case

On April 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented effective June 8, 2017.

Applicant submitted an Answer to the SOR on May 3, 2018, and 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 August 21, 2018. Applicant received it on August 28, 2018. The Government's evidence is identified as Items 1 through 11. 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. Applicant submitted a one-page response to the FORM (Response). Items 1 through 7 and the Response are admitted into the record without objection. The case was assigned to me on December 3, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.d, 1.h, and 1.i with explanations. She denied SOR ¶¶ 1.e, 1.f, and 1.g. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact, in chronological order.

Applicant is 41 years old. She earned a bachelor's degree in 2016. She is married and has three minor children. (Answer.) She has been employed in her position with a government contractor since June 2015, although the contract holder changed in March 2017. She was unemployed from August 2012 to May 2015. (Item 5.)

Applicant filed Chapter 7 bankruptcy in September 2009 (SOR ¶ 1.b). She attributed her financial problems at that time to an unstated period of separation from her husband. In 2009 her husband was discharged from the Army and diagnosed with multiple sclerosis. They separated and Applicant was left to support her daughter. She could not afford to pay all of her bills on her salary. As a result, she consulted an attorney, who recommended she file Chapter 7 bankruptcy. She discharged \$155,518 in claims through that bankruptcy in February 2010. She has since reconciled with her husband. (Answer; Item 6.)

Applicant owed Federal income taxes for tax years 2010, 2012, 2013, and 2014, in the amounts of \$732; \$7,279; \$4,560; and \$3,843, respectively, as alleged in SOR ¶¶ 1.d through 1.g. Those amounts are reflected on March 2018 account transcripts from the Internal Revenue Service (IRS). As of April 2018, Applicant owed \$0 for 2010, 2012, and 2013 after balances of \$546 for 2010; \$5,937 for 2012; and \$4,047 for 2013 were "written off" by the IRS. She has established multiple installment agreements with the IRS in the past, but has no history of regular payments under those agreements. (Answer; Reply; Item 3; Item 5.)

Additionally, Applicant failed to file her Federal and state tax returns in a timely manner in 2011, as alleged in SOR ¶ 1.c. They were filed late, in October 2012. She blamed the late filing on having a baby in March 2012 and moving to another state in July 2012. Her 2011 IRS account transcript reflected she had a zero account balance for 2011. (Answer; Reply; Item 3; Item 5.)

Applicant was employed by a U.S. government agency from July 2011 to July 2012. In March 2012, she was confronted by her supervisor and accused of using her government credit card for personal use (SOR ¶ 1.i). Applicant admitted she used her

government credit card to take out three “cash advance[s] for gas money and to help supplement for food and bills.” She set up a repayment plan with her employer, but failed to complete the repayment plan when she terminated her employment in August 2012. The debt was eventually discharged in her 2017 Chapter 7 bankruptcy, discussed below. She received an IRS 1099-C, Cancellation of Debt, from this creditor. (Answer; Item 5.)

Applicant was indebted to her state taxation authority for delinquent taxes in the amount of \$2,218 (SOR ¶ 1.h). In February 2018, she set up a payment agreement to resolve this debt through 23 monthly payments of \$145. She failed to produce documentation of payments under that agreement. This debt is unresolved. (Answer; Item 5.)

In October 2017 Applicant filed her second petition for Chapter 7 bankruptcy (SOR ¶ 1.a). She discharged \$115,187 in debt on January 10, 2018. (Item 4; Item 7; Item 8.)

Applicant received financial counseling from a financial readiness center. Documentation from financial counseling suggests Applicant and her husband have a monthly surplus of \$1,094, after their monthly expenses are paid. The financial counselor advised them to pay off small debts first and begin to pay back student loans, which are currently in deferred status. The financial counselor recommended Applicant’s husband quit smoking. They were advised to eliminate unnecessary services and subscriptions to save money. It is unclear from the record if Applicant implemented any of these suggestions, although she indicated she was working to improve her finances and resolve her debts. (Answer; Response.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 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 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. 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. Directive ¶ E3.1.15 states 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 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, Section 7 of EO 10865 provides that adverse 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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant discharged \$155,518 of delinquent debt through Chapter 7 bankruptcy in 2010. She then incurred another \$115,187 in debt, which she discharged in Chapter 7 bankruptcy in 2018. She has a history of not meeting her financial obligations and spending beyond her means. She misused her government credit card on three occasions in 2012, which was an intentional breach of the government's trust. There is sufficient evidence to establish disqualification under AG ¶¶ 19(a), 19(c), 19(d), and 19(e).

Applicant failed to file Federal and state taxes in a timely manner in 2011. She failed to pay her Federal income taxes for 2010, 2012, 2013, and 2014. She also incurred an unresolved state tax liability. There is sufficient evidence to support the application of AG ¶ 19(f).

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant discharged a significant amount of delinquent debt through two Chapter 7 bankruptcies, just eight years apart. Her financial circumstances remain largely unchanged, and there is no evidence that she will be able to avoid delinquent accounts in the future. She remains indebted for Federal and state taxes. Her debt is ongoing. AG ¶ 20(a) does not apply.

Applicant attributed the financial problems to her separation from her husband, his medical problems, and her unemployment. Those are circumstances beyond her control. However, those circumstances do not mitigate her poor judgment in using her government credit card for personal purchases. Further, the record lacks documentation to show she reasonably and responsibly addressed her delinquencies. Mitigation under AG ¶ 20(b) is not fully established.

Applicant provided documentation of financial counseling. However, there is insufficient evidence to conclude that she is making a good-faith effort to repay her creditors or that she has taken the advice of the credit counselor. There is minimal evidence to conclude that her financial problems are under control. The evidence does not establish full mitigation under AG ¶¶ 20(c) or 20(d).

Applicant did not provide evidence of a reasonable basis to dispute any of her alleged delinquencies. AG ¶ 20(e) does not apply.

Applicant filed her state and Federal income tax return for 2011. She has been relieved of liability for tax years 2010, 2012, and 2013, after the IRS wrote off those debts. Applicant provided no evidence of arrangements to resolve her Federal tax debt for 2014. She provided no documentation of payments to the state taxation authority under her agreement. Documentation of compliance with those arrangements is necessary. AG ¶ 20(g) does not mitigate the Government's concern.

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 national security eligibility 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 has recently discharged delinquent debt through Chapter 7 bankruptcy and has the opportunity to rebuild her credit. While Applicant has not provided sufficient evidence about her overall financial stability to conclude further tax problems or financial delinquencies are unlikely, she will be on a path to financial stability if she follows the advice of the financial counselor, resolves her tax debts, and addresses her student loans. She may be eligible for national security eligibility in the future if she is able to document reasonable and responsible actions to maintain solvency. 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.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge