



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



In the matter of:)
)
) ISCR Case No. 18-01702
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 24, 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 14, 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), and Applicant received it on November 14, 2018. She was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 8. Applicant submitted a timely response and her exhibit is marked as Applicant's Exhibit (AE) A. There were no objections by Applicant or Department Counsel and all Items and AE A are admitted into evidence. The case was assigned to me on February 11, 2019.

Procedural Matters

As part of the Government's FORM, it withdrew the Guideline B allegation.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. She earned a bachelor's degree in 2003. She married in 2006 and has one child born in 2017. She has been employed by the same federal contractor since 2004.¹

Applicant disclosed on her December 2016 security clearance application (SCA) the delinquent debts alleged in the SOR (¶¶ 1.a-\$18,298; 1.b-\$12,550; and 1.c-\$7978). The debts became delinquent in approximately 2011 or 2012. Applicant attributed her financial problems to the loss of her husband's job in 2011, and mismanaging her finances. With regard to the debts in SOR ¶¶ 1.b and 1.c, she stated she made a decision to pay other bills and would pay these debts when she was more financially stable. She said she did not become financially stable until 2015. Subsequently the creditors stopped contacting her, and she did not follow up to resolve these debts. With regard to the debt in SOR ¶ 1.a, she stated she intended to contact the creditor and arrange a payment plan. This debt was charged off in 2012. Applicant stated: "Since 2011, I have tried to make a better effort at being more responsible with my finances and am more financially stable now. Please consider that I am trying to take responsibility for my previous financial mistakes."²

In February 2017, Applicant's son was born prematurely and was required to stay in the hospital for 10 weeks. Applicant had a high medical insurance deductible and incurred medical expenses. She has paid them.³

In August 2017, Applicant was interviewed by a government investigator. She told the investigator that the debts in SOR ¶¶ 1.b and 1.c were personal loans she obtained in 2009 and used for general expenses. The debt in SOR ¶ 1.a was a credit card that she obtained in 2010 for general expenses. At the time, both she and her husband were

¹ Item 4.

² Item 4.

³ Items 3, 5.

employed. Her husband lost his job in 2011, and their financial situation became tighter. She stated that she had not made any attempt to repay these loans or the credit card, but intended to do so by 2018 because her husband had resumed working.⁴

In Applicant's answer to the SOR, she reiterated that the loss of her husband's income in 2011 impacted their finances. They moved into her mother's house, but their debts exceeded her income. The premature birth of her son in February 2017, and his high medical expenses, also impacted her finances, but she has managed to pay the medical debts. She said that over the past seven years she has managed their money better and they were living within their means. She stated: "After I have been caught up on paying off my current bills, I have every intention of repaying my past debts."⁵

In Applicant's December 2018 response to the FORM, she stated that her current financial priority is to make payments on a home equity loan on her mother's house where Applicant, her husband, and child live. She has been making payments on this loan since 2006. She stated, "Even though I mentioned my husband and I became more financially stable in 2015 due to his new job, I admit I did not try and resolve my past debts because I was able to pay more down on the Home Equity Loan during 2015 and 2016."⁶ She also was paying medical expenses for her son.⁷

Applicant stated that she has a balance of about \$18,000 on credit card accounts that are current. She and her mother are joint owners on one of the cards, and she and her husband are joint owners on another. Applicant confirmed that she took vacation trips in October 2014, June 2016, and October 2016. She explained that her mother paid for the 2014 trip. The other two trips were part of a free all-inclusive resort package. Her mother paid for the airfare for the June 2016 trip, and Applicant paid for her and her husband's airfare for the October 2016 trip. She admitted she did not act responsibly when she owed delinquent debts. Applicant stated that she wants to resolve her delinquent debts, but did not want to overextend her finances at this time. She said that she needs more time and is hoping to resolve the debts sometime in 2019.

Applicant did not provide information on her or her husband's income; the amount she is paying toward the home equity loan; whether she has contacted any of her creditors; whether she has a budget; or why she failed to address the delinquent debts after she became more financially stable in 2015, before her son was born. Applicant's admissions and credit reports from March 2017 and April 2018 corroborate the debts alleged in the SOR.⁸

⁴ Item 5.

⁵ Item 3.

⁶ AE A.

⁷ AE A.

⁸ Items 3, 4, 5, 6, 7.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 as to 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

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; and
- (c) a history of not meeting financial obligations.

Applicant has three large debts that became delinquent in 2011 and total approximately \$38,826. She is unable to pay these debts at this time. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not paid or provided evidence of any action she has taken to resolve the delinquent debts that are now more than eight years old. The debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to the loss of income when her husband became unemployed in 2011. This was beyond her control. She also attributed it to mismanaging her finances, which was within her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant indicated that her finances improved and stabilized in 2015, but she decided to pay her mother's home equity loan on the house where Applicant and her family live, rather than address her delinquent debts. This situation occurred before her son was born in February 2017. She did not provide sufficient evidence to show she acted responsibly under the circumstances. Applicant had an opportunity, when her finances stabilized, to begin to address her delinquent debts that she was aware were a security concern. She indicated on her 2016 SCA that she should have contacted the creditors in 2015, but did not because she was paying other accounts. She indicated during her 2017 background interview that she would begin addressing them. She made the same assertion in her August 2018 answer to the SOR and in her December 2018 response to the FORM. However, Applicant did not provide evidence that she has taken any steps to resolve these delinquent debts. AG ¶ 20(b) has partial application.

There is no evidence Applicant has received financial counseling. There is no evidence she is making good-faith efforts to pay any of the accounts alleged in the SOR. AG ¶¶ 20(c) and 20(d) do 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 guidelines 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 39 years old. His financial problems began in approximately 2011 when her husband lost his job. She also attributed her financial problems to mismanagement. Applicant failed to provide evidence that she has taken action to begin to resolve the delinquent debts. She indicated that her priority is to pay down a home equity loan on her mother's house where she and her family live. Applicant did not provide evidence of a current financial budget; ability to repay her delinquent debts; or a plan for resolving her financial problems. She did not provide evidence that she contacted her creditors and is making payment arrangements. At this juncture, Applicant has not met her burden of persuasion or established a reliable financial track record. 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.

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.c:	Against Applicant
Paragraph 2, Guideline B:	Withdrawn
Subparagraph 2.a:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge