



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-01716

Appearances

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

07/30/2019

Decision

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

Statement of the Case

On July 6, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). This 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. In a July 24, 2018, response, she admitted all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on January 16, 2019.

A notice was issued on March 15, 2019, setting the hearing for April 4, 2019. After Applicant failed to appear, it was discovered that she had not received the notice of hearing. A new notice was issued on April 11, 2019, setting the hearing for May 9, 2019. The hearing was convened as scheduled. The Government offered three exhibits (Exs.) which were accepted into the record without objection as Exs. 1-3. Applicant gave testimony relevant to the case. On May 17, 2019, the Government forwarded materials received from Applicant after the hearing. Those documents were accepted

into the record without objection as Exs. A-F. The transcript (Tr.) of the record was received on May 29, 2019. The record was then closed. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 43-year-old director of human relations who has been in her current position with her present employer for over two years. With this job, her salary history has flourished. After three months of unemployment in mid-2009, she started a job earning \$45,000 and has received incremental salary increases ever since. She was initially hired in her present position with a salary of \$95,000 a year. Her salary was recently raised from \$105,000 to \$115,00 a year.

Academically, Applicant has earned two associate's degrees and a bachelor's degree. In 2013, she completed her education by earning a master's degree in public administration. Married, Applicant is the mother of three children, aged between 13 and 23. The middle child splits time between a school dormitory and Applicant's home, while the other children reside elsewhere. She has not received financial counseling. (Tr. 11)

At issue in the SOR are 12 delinquent debts, regarding which Applicant admits responsibility. Those accounts amount to approximately \$36,000 in delinquent debt. With regard to the collection and charged-off accounts at issue in 1.a-1.l, Applicant listed almost all of these debts on her security clearance application (SCA), but only became aware of a couple of others when she received the SOR. She also stated she has been working with her known creditors, but provided no documentation reflecting those efforts. Applicant admitted she has made little progress due to lack of financial resources. (see, e.g., Tr. 33)

Applicant testified that she has worked on resolving the debt at 1.b for several years and has been trying to work out a payment schedule for the debt at 1.c, but offered no documentation to that effect. The creditor at SOR allegations 1.i and 1.j have refused to work out a settlement with her. (Tr. 49-50) No documentary corroboration was provided with regard to these accounts.

Documentation, however, was presented showing that the debt for \$2,837 at SOR allegation 1.e was cancelled by the creditor in 2018. (Ex. A and Ex. C at 2; Tr. 42-43, 56-57). The debts noted at 1.k and 1.l were consequently satisfied by this cancellation as they were subsequent collection efforts for that same debt. (The debt for \$586 noted at SOR allegation 1.i was also disputed successfully. See Ex. F; Tr. 62- 65) The collection entity at 1.g was also cancelled. (Ex. B and Ex. C at 2; Tr. 59-63). Taxes are owed on the two cancelled debts and a proposal from the Internal Revenue Service (IRS) was received by Applicant; she responded by stating she could not currently pay the taxes proposed. (Ex. C; Tr. 45) In sum, documentation was only presented regarding the two cancellations and the successful dispute that related to SOR allegations 1.e, 1.k, and 1.l.

At one point, Applicant discussed the possibility of pursuing debt consolidation. In the end, she preferred to negotiate and see if she could pay off her delinquent debts by herself. (Tr. 67) Helping with the support of her two youngest children and being the breadwinner in the home, Applicant tends to struggle each month meeting her obligations. (Tr. 68) Her husband generated scant income. She has no monthly net remainder after all bills are paid. Money has been particularly tight since December 2018, as Applicant converted to telework and reduced hours so she could help with her mother, who was recently diagnosed with a rare cancer. Going forward, Applicant hopes to continue working with her creditor and trying to “see if they can work something out” with her. (Tr. 74) This is the first time in her life she has had bad credit.

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.

Four 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; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There are multiple delinquent debts at issue. It appears her buildup of delinquent debt was attributable to expenses exceeding income and, given that some accounts had simply gone unnoticed, neglect. Applicant acknowledged that she has not paid down any of her debt, but has only worked with her creditors.

Direct documentation regarding such efforts is scant, and pertain to three accounts specifically. An account she testified was disputed was shown as successfully disputed and has since been deleted from her credit report. Two account-related debts were cancelled, although it is unclear these actions were the result of Applicant's efforts or a decision by the creditor. Otherwise, the status of the remaining nine of the dozen delinquent debts at issue remain unchanged.

Applicant has not received financial counseling. While she has a loosely constructed plan for going forward, she does not have the financial resources at present to address the remaining delinquent debts or pay the taxes owed on the two cancelled debts. At best, AG ¶ 20(d) applies in part due to the reduction of delinquent debts at issue.

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 43-year-old director of human relations who has been in her current position with her present employer for over two years. Her salary has grown significantly over the past decade year, from about \$45,000 to \$115,000. She has been steadily employed for the past decade. She is married and has three children. She provides financial support for her middle and youngest child, both of whom are under 21. Her husband does not significantly contribute to the family coffers, leaving Applicant as the breadwinner. This is the first time in her life she has faced such financial distress.

Although uncorroborated by documentary evidence, Applicant has tried to work with many of her creditors since before the SOR was issued. Those undocumented efforts, however, have achieved scant success. A dispute she said she made regarding one account resulted in its deletion from her credit report. Two account balance debts were cancelled, an act that also sated two duplicate accounts. Because money remains tight, the taxes on the cancelled debts remain unpaid and Applicant has yet to implement a structured, workable, repayment plan to address the lion's share of the delinquent debts remaining.

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 has failed to meet that standard. Moreover, given her current cash flow, it appears unlikely she will be able to make more than cursory payments on any of the remaining debts in the near future

without significant changes. While some improvement of her delinquent debt situation has been made, they are insufficient to mitigate financial considerations security concerns. As previously noted, any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. Therefore, financial considerations security concerns remain existent.

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.d, 1.f, 1.h-j:	Against Applicant
Subparagraphs 1.e, 1g, 1.k, 1l:	For 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