



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



In the matter of:)
)
) ISCR Case No. 18-02133
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*
02/14/2019

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

On August 29, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR 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 September 27, 2018. Applicant received the FORM on October 9, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and she provided a one-page response to the FORM dated October 24, 2018, and attachments including: a debt-management agreement with a credit-counseling company requiring a first payment of \$205 in November 2018; income and expense information; and a university transcript. The Government’s evidence, identified as Items 1 through 6, and the FORM response are admitted into evidence without objection. The case was assigned to me on January 17, 2019.

Findings of Fact¹

Applicant is 43 years old. She obtained her bachelor's degree in 2010 and she is currently enrolled online in a master's program in criminal justice. She has been employed as a detective on the campus police force of a prominent college since May 2015, and as a federal contractor since 2011. She reported no military service and she was divorced in 2011 after seven years of marriage. She has no children. Her former husband handled all of their finances. They were compelled to file for Chapter 7 bankruptcy protection in 2008 because Applicant suffered serious health problems. Applicant reported no previous security clearance. She answered all of the financial questions in section 26 (Financial Record) of her security clearance application (SCA) negatively, failing to disclose her delinquent student loans and medical debts.

The SOR alleges the 2008 bankruptcy, five debts for overdue student loans, and eight delinquencies for medical debts. The delinquent debts alleged total \$43,306 including \$38,989 for past-due student loans placed for collection. Applicant admitted all of the SOR allegations in her answer to the SOR on September 10, 2018, and she provided a one-page explanation. She explained that they were advised to file bankruptcy for their small business once Applicant became ill in 2007-2008. She was enrolled in a master's program in September 2018 and stated her intention to contact the Department of Education about her financial aid and a repayment plan. She also claimed she committed funds to take care of her medical debts and she would start the process on September 10, 2018. No documentary evidence was provided to show her progress, if any.

In her April 2018 personal subject interview (PSI) with a clearance investigator, Applicant stated that she thought she was entering into a one year contract with the fitness company creditor in SOR ¶ 1.o, but the employee signed her up for three years instead. (Item 5) Applicant stated her plan to contact this creditor to set up a payment plan and finish paying this debt off. No documentary evidence of follow-through was provided to show that she did this. With respect to her student loan debts at SOR ¶¶ 1.b, 1.c., 1.d, 1.m, and 1.n, Applicant told the clearance investigator that they became delinquent because her former husband said he would take care of paying them. She claimed to be in the process of setting up a payment plan to resolve these debts, but provided no evidence of a track record or stream of payments on her student loans.

Applicant has a health condition that requires her to travel to a specialized hospital for care. This has been a burden financially, and she is unable to make payments timely on a single income. (Item 5) Again, she stated her plan to set up a repayment plan for the resulting delinquent medical debts listed in the SOR. In late 2018, Applicant entered into a debt-management agreement (attached to FORM

¹ Unless stated otherwise, the source of the information in this section is Applicant's April 18, 2017 security clearance application (SCA) (Item 3), or her personal security interview (PSI) on April 20, 2018. (Item 5)

response) but provided no evidence of actual payments pursuant to that plan. She also provided budget information and evidence of financial counseling in late 2018. Her loan rehabilitation, income and expense information shows her monthly income of \$2,883 compared to expenses of \$2,110 in October 2018. (FORM Response) The delinquent debts alleged in the SOR are all corroborated by her credit reports. (Items 4 and 6) She has no automobile loans or credit-card debts.

Applicant grew up as a military dependent of a senior officer, and she has been a sworn police officer in Commonwealth A since 2010. She provided no character references or performance evaluations. Applicant attached a college transcript to her FORM response showing that she maintains a 3.8 grade point average in her master's program. She produced evidence that she has taken the first step by entering into a debt-management plan to resolve her numerous student loans and medical debts, but she has provided no evidence of compliance or actual payments. It is unclear whether any of her SOR debts have been paid or disputed.

Policies

This 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 Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, 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 recognize the complexities of human behavior, and 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 adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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. 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 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. 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 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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's 2008 bankruptcy and the delinquent debts alleged in the SOR are confirmed by her credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), (b), (c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.² Applicant has not met that burden.

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 . . . , 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 endured a divorce, and a life-threatening illness. These conditions were beyond her control. Yet, despite her knowledge almost a year ago that her delinquencies might affect her eligibility for a security clearance when she had her clearance interview, she has done very little to resolve these delinquent accounts. She also stated her intention to make payment arrangements during her clearance interview. She has produced no relevant or responsive documentation either with her answer to the SOR, or in response to the FORM, except for the debt management agreement and attendant documents. This was too little, too late. She has not demonstrated that she acted responsibly under the circumstances. These delinquent debts are longstanding from her college days, and continuing. She had previous financial distress when she filed for bankruptcy protection in 2008. Applicant has the burden to provide sufficient

² Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

evidence to show that her financial problems are under control, and that her debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. She admitted her delinquent medical debts and student loans and her credit reports confirm these debts. Applicant did not provide enough details with documentary corroboration about what she did to address her SOR debts. She did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;³ (3) credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution.

In the FORM, Department Counsel informed Applicant that it was important for her to provide corroborating or supporting documentation of resolution of the debt in the SOR. (FORM at 3) Aside from Applicant's uncorroborated statements of intent, there is no documentary evidence that Applicant paid, settled, compromised, or otherwise resolved the SOR debts. She did provide evidence of recent financial counseling and information about her budget. Yet, the record lacks corroborating or substantiating documentation such as receipts or bank statements showing an actual stream of payments and detailed explanations of the causes for her financial problems and other mitigating information.

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

³ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or his] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 those guidelines. Notably, Applicant has struggled to overcome a serious health condition and she served as a sworn law enforcement officer for almost nine years. She is continuing her education online and she made initial overtures toward resolving her financial problems. Most importantly, Applicant has not addressed the specific allegations in the SOR with concrete documentation. Instead, she has made hollow statements of her intent to repay her delinquent debts. She has not met her burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. She has not met her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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
Subparagraph 1.a – 1.o:	Against Applicant

Conclusion

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

Robert J. Kilmartin
Administrative Judge