



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



In the matter of:)	
)	
)	ISCR Case No. 18-02176
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

04/18/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 24, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017 (AG).

Applicant answered the SOR on December 7, 2018. She 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 January 10, 2019. The evidence

included in the FORM is identified as Items 3-11 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on January 15, 2019. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to any of the Government's evidence. She submitted a series of documents, which were admitted collectively as exhibit (AE) A. Items 3-11 are also admitted without objection. The case was assigned to me on March 28, 2019.

Findings of Fact

Applicant admitted all the allegations in the SOR with explanations, except ¶ 1.i, which she denied. Her admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 63 years old. She is a retired federal employee currently seeking a position with a federal contractor. She is single, twice divorced, with three adult children. She achieved her GED in 1985 and has taken some college courses.¹

The SOR alleged Applicant filed for Chapter 7 bankruptcy in 1991 (discharged); Chapter 7 in 2002 (discharged); Chapter 13 in 2009 (dismissed); Chapter 7 in 2012 (discharged); and Chapter 13 in 2014 (dismissed) (¶¶ 1.a-1.e). The SOR also alleged she was delinquent on her federal income taxes in the amount of \$18,717 for years 2010 and 2014-2016, and state income taxes in the amount of \$4,754 (¶¶ 1.f-1.g). It further alleged she owed on six delinquent collection accounts in the total amount of approximately \$18,868. These accounts are comprised of a medical bill, utility debt, an apartment debt, a repossessed car debt, and consumer debt. The allegations are supported by credit reports from April 2018 and October 2018, Applicant's statement to a defense investigator in May 2018, various bankruptcy filings, and Applicant's SOR admissions.²

Applicant claimed financial hardship when she retired from her government position in 2017 and had to wait several months before she began receiving retired pay. She documented this delay. There is no evidence of financial counseling.³

Bankruptcies. Applicant filed Chapter 7 bankruptcies and was discharged from her debts in 1991, 2002, and 2013 as a result of those proceedings. In 2009 and 2014 Applicant filed Chapter 13 bankruptcy petitions. Both those actions were dismissed. There is no information as to the reason the 2009 petition was dismissed, but the 2014 petition was dismissed in 2017 for failure to make three months of payments under the bankruptcy plan. While Applicant was a federal employee she had \$197.50 deducted

¹ Items 3-4.

² Items 2, 4-11.

³ AE A.

from her paycheck twice a month. From September 2014 until March 2017 she paid approximately \$13,000 in plan payments before her petition was dismissed.⁴

Taxes. Applicant claims she entered into a payment agreement with the IRS to pay her federal tax debt. As proof of this agreement, she supplied a notice letter from the IRS dated April 18, 2018. The notice indicated that she owed \$18,717; that her last payment was \$0; and that next payment of \$242 was due on May 1, 2018. Applicant failed to provide documentation showing that she has made any payments to the IRS starting in May 2018. As for her state taxes, she provided an installment bill from her taxing authority dated July 30, 2018, which indicated that she had a remaining balance of \$4,754 and her monthly payment of \$96 was due on August 15, 2018. She failed to provide documentation showing that she made her monthly payments beginning in August 2018.⁵

Collection Accounts. SOR ¶ 1.h: In February 2019, the creditor offered to settle this debt with Applicant for approximately \$1,600 with monthly payments of \$75. Applicant failed to document that she accepted the offer or made any payments. **SOR ¶ 1.i:** Applicant disputes this utility debt. She claims she was serviced by another company at the time of this alleged debt. She formally disputed this debt through a credit reporting service. **SOR ¶ 1.j:** Applicant documented that this medical debt was paid in August 2016. **SOR ¶ 1.k:** Applicant claims this debt was included in her 2014 Chapter 13 bankruptcy and she was making her required payments until the case was dismissed. She did not provide documentation showing any payments since the Chapter 13 dismissal. **SOR ¶ 1.l:** Applicant claims her payment on this debt was affected by not timely receiving her retirement payments. She claims she will make \$20 monthly payments on this account, but she failed to document any payments so far. **SOR ¶ 1.m:** Applicant claims her payment on this debt was affected by not timely receiving her retirement payments. She claims she will make \$10 monthly payments on this account, but she failed to document any payments so far.⁶

Character Evidence. Applicant presented statements from seven co-workers and colleagues. In her former government position, she occupied a position of trust as a pretrial services officer. Her co-workers recognized her as a professional and trustworthy employee. They noted her dedication to her job and her great integrity.

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

⁴ Items 7-11; AE A.

⁵ Item 4; AE A.

⁶ Item 2; AE A.

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(a), 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.

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 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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; 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's multiple bankruptcy filings over the years demonstrate her inability and unwillingness to pay her debts. She has federal and state tax debt, and other delinquent debts that remain unpaid. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; and

(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.

None of these mitigating conditions fully apply. Except for two debts, Applicant's debts are recent and remain unresolved. She has filed five bankruptcy petitions since 1991, with the most recent in 2014. Her federal and state income tax debt remains unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant's delayed receipt of her monthly retirement pay may be considered a condition beyond her control, however, she failed to take responsible actions to address her tax and other debts. I find AG ¶ 20(b) partially applies. Except for one debt, Applicant also failed to address her SOR debts through payments or establishing payment plans. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) do not apply. Aside from one debt (SOR ¶ 1.i), Applicant failed to document any disputed debts. AG ¶ 20(e) partially applies.

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 guideline 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 considered Applicant's previous federal employment and the recommendation of her co-workers and colleagues. However, Applicant has not established a track record of financial stability.

Overall, 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.⁷

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.h:	Against Applicant
Subparagraphs 1.i – 1.j:	For Applicant
Subparagraphs 1.k – 1.m:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge

⁷ I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.