



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



In the matter of:)
)
) ISCR Case No. 19-01218
)
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2019

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 May 9, 2019, 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 effective June 8, 2017 (AG).

Applicant answered the SOR on June 11, 2019, 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 22, 2019. The evidence

included in the FORM is identified as Items 4-7 (Items 1-3 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on August 27, 2019. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did not submit any evidence or file objections to the Government's evidence. Items 4-7 are admitted into evidence without objections. The case was assigned to me on November 6, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations, with explanations (SOR ¶¶ 1.a-1.o). The 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 44 years old. She has worked for a government contractor since July 2005. From 2007 to 2013 she also worked part-time in sales for a retail business. She received her bachelor's degree in 1998. She is single, has never married, and has no children. (Items 4-5)

The SOR alleged 15 delinquent debts totaling approximately \$25,000. The debts are comprised of charged-off and collections accounts (credit cards and consumer debts). The debts are supported by credit reports from December 2016 and March 2019, her statement to an investigator in April 2018, and her SOR admissions in her answer. (Items 3-7)

Applicant attributes her financial problems to losing her part-time job in 2013 and the loss of her fiancé, with whom she shared expenses and financial obligations. No further information is contained in the record concerning her fiancée. Applicant documented that she entered into a debt relief plan (DRP) in April 2018. Under the terms of the DRP, all the SOR debts were included in the plan. Applicant was to pay \$378 monthly (through bi-weekly bank withdrawals) for 48 months beginning in May 2018. Applicant failed to produce documentation that any payments were made to the DRP or that the DRP made any payments to the listed creditors. Applicant included two emails from the debt relief company to Applicant (dated June 6, 2018, and May 29, 2019), which both listed payment schedules, but neither documented any previous payments made. She did not provide any information about her current financial circumstances. Aside from entering into the DRP, Applicant provided no evidence of financial counseling. She presented no evidence of taking other action to pay or otherwise resolve the SOR debts. Applicant's debts remain unresolved. (Items 2 (See DRP attached to Applicant's answer), Item 5).

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

Applicant's delinquent debts remain unpaid or unresolved. I find 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; and

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

Applicant's debts are recent and remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented some evidence that the debts were due to circumstances beyond her control (losing her part-time position and the loss of her fiancé). She began taking responsible action by entering into the DRP, but she failed to establish that she followed through on her efforts by showing actual proof of payments to the DRP and the resulting diminution of her SOR debts. She did not show that she took responsible action to resolve her debts. I find AG ¶ 20(b) does not fully apply. Applicant's only efforts to resolve her debts was to enter into the DRP in May 2018. She documented no further action by her since then. She failed to provide documentation showing any efforts to make payments on the listed debts. There is no evidence she obtained financial counseling. AG ¶¶ 20(c) and 20(d) do not fully 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 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 loss of her part-time position and the loss of her fiancé. However, she also failed to present documentation showing payments under the DRP and therefore addressing her debt. 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.

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.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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge