



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



In the matter of:)
)
) ISCR Case No. 21-01510
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. She did not present sufficient documentation to support her burden of proof. Eligibility for access to classified information is denied.

Statement of the Case

On December 17, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to 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 March 17, 2022. Applicant received the FORM on April 13, 2022. The Government's evidence, included in the FORM and identified as Items 1 through 11 is

admitted without objection. The case was assigned to me on July 11, 2022. Applicant answered the SOR, but provided no response to the FORM. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

Applicant is 39 years-old, divorced and has five children. (Item 2) She completed a security clearance application on December 22, 2015. (Item 3) Applicant attended college courses, but she has not received a degree. She has held a security clearance since 2016. Applicant reports no military service. She is being sponsored by a defense contractor for a security clearance. (Item 5)

In 2015, when Applicant signed her security clearance application, she was using the last name of Munoz. In 2020, when she obtained the services of the debt resolution company, she used the last name Munoz. The name Munoz appears to be her mother's last name. (Item 3) On Applicant's 2021 credit bureau report, her consumer name is Munoz and her other name is Coronel. (Item 8) From the record it appears that in 2022, Applicant's last name was Coronel. This last name is also on her 2022 credit bureau report. (Item 9) The files in this case reflect both names.

Financial

The SOR from December 2021, alleged that Applicant has about \$29,961 in delinquent debt for 19 accounts, and a chapter 7 bankruptcy that was discharged in 2014. (Items 1,7, 10) The allegations in the SOR ¶¶ 1.a through 1.t are supported by Applicant's 2020 and 2021 credit bureau reports. (Items 7, 8, 9) She admitted 15 of the SOR allegations and denied four alleged accounts. Applicant claimed in her answer to the SOR that those accounts were paid.

Applicant attributed her financial difficulties to a two income family reduced to one income. Her husband at the time suffered a heart attack in 2015, and he could not work for several months. Applicant became the sole provider and she used credit cards to pay household bills including rent and food. In 2016, Applicant's husband suffered another heart attack. Applicant filed for divorce in 2020 and moved out of the house with her five children. (Item 2)

In May 2019, a continuing evaluation (CE) report was issued to Applicant's employer stating that Applicant had 13 delinquent accounts totaling \$18,229. (Item 4) She also had a \$4,000 judgment against her. (Item 11) The judgment is the same as SOR allegation 1.o for \$4,608. She then reported the judgment to her FSO. On January 20, 2021, another CE report was issued to Applicant's employer. (Item 6) This CE report showed \$21,095 in delinquent debt which Applicant had not disclosed. (Item 6) At the time, Applicant stated that she was utilizing a debt relief program. (Item 5)

In August 2020, Applicant signed a debt resolution agreement for enrolled debt \$21,479. (Item 2) The term was for 48 months. Applicant submitted the signed agreement and proof that she has paid \$146 bi-weekly (as a program deposit amount) to the debt relief company since October 2020. Applicant was advised to stop paying all debt so that settlement amounts could be negotiated. (Item 2) There were 15 accounts enrolled in the plan.

Applicant submitted a screen shot of the four accounts that she denied in her answer to the SOR (1.b, 1.d, 1.i, and 1.t), noting in her handwriting that those accounts were paid in full. She did not state the amount of settlement for each of the accounts. However, her latest credit report reflects a payment on the four debts which amount to \$5,746 (19% of the delinquent debts alleged in the SOR). (Item 9) Applicant claims that settlement agreements have been reached on four other accounts, but she did not submit evidence to substantiate her claim. (Item 2)

As to the 2014 chapter 7 bankruptcy that was discharged in the amount of about \$18,000 for consumer debt, she explained in her security clearance application that she was not financially able to provide for her children and pay her previous debts. (Item 3)

The record reflects that Applicant has a total net monthly income of \$2,800. Her total monthly expenses are \$2,700. She has a monthly disposable income of \$100. (Item 2) There is no record of financial counseling. (Item 2)

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 to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her 2014 chapter 7 bankruptcy and credit reports, establish two disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”); and 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

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 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

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

Applicant admitted that she has not been able to pay her debts (\$18,000) and had to file for bankruptcy in 2014. Bankruptcy is a legitimate way to resolve debts, but since 2014, Applicant acquired more debt. Applicant admitted the majority of the debts in her answer to the SOR. She does not receive full mitigation as she did not act responsibly. Granted her husband had two heart attacks and could not work for a period of time which was beyond her control. However, she divorced him in 2020, and did not obtain the services of a debt relief company or address her undisclosed delinquent accounts until the issuance of the first CE report. She then disclosed the \$4,000 court judgment to her FSO.

Applicant obtained the services of the debt relief company after her first CE. She was advised not to pay her debts by the company. This was a way to settle her debts for less than she borrowed or charged and is not a sign of good-faith efforts to resolve delinquent debts.

Applicant waited to resolve debts until her security clearance was in jeopardy. This does not show reliability or good judgment. Applicant has a history of financial irresponsibility. Applicant has recently paid or settled some debts, but is waiting for the debt resolution company to settle the other delinquent debts on the SOR that are unresolved. She provided little evidence to prove that she has a track record of paying the remaining delinquent debts. She has not sought financial counseling. Her disposable income on a monthly basis is \$100, but she has to pay \$146 bi-weekly to the debt relief company.

Based on the scant evidence produced by Applicant, it is impossible to conclude she made a sufficient good-faith effort to resolve her debts or that her financial situation is under control. The Government has cause to question whether Applicant has her finances under control. Any doubts must be resolved in favor of the Government.

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 relevant 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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to classified or sensitive information.

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.t:	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's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge