



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



In the matter of:)
)
) ISCR Case No. 22-00898
)
Applicant for Security Clearance)

Appearances

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

03/09/2023

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Financial Considerations guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of the Case

On June 20, 2022, the Department of Defense Consolidated Adjudications Facility (DoD) issued a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). On September 15, 2022, Applicant answered the SOR in writing and elected to have her case decided on the written record in lieu of a hearing (Answer). (Item 2)

On November 19, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on November 21, 2022. She received the FORM on December 20, 2022. The FORM notified her that she had an opportunity to file objections and submit additional information in refutation, extenuation, or mitigation within 30 days of receipt of

the FORM. Applicant did not submit any additional documents or file objections to the Government's evidence. Hence, Items 1 through 8 are admitted into evidence. I received the case file on February 13, 2023.

Procedural Matter

The Government withdrew SOR ¶ 1.0 based on proof that the debt was discharged in Applicant's 2013 Chapter 7 bankruptcy.

Findings of Fact

Applicant admitted all 16 remaining allegations in the SOR with explanations. Her admissions are incorporated into the findings of fact. (Item 2) After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old and unmarried. She has one child. She earned a bachelor's degree in 2002 and a master's degree in 2016. In March 2019, she started a position with her current employer, a defense contractor and she submitted a security clearance application (SCA). (Item 3)

In her SCA, Applicant reported that she had been granted a security clearance in 2006. She listed numerous periods of unemployment since January 2011, including from October 2018 up to the time she started her current position. She attributed those periods to layoffs and her medical disabilities. Consequently, she experienced financial difficulties that she could not address on her limited income. (Item 3) She disclosed that she failed to file and pay Federal and state income taxes for 2016 because she had been evicted in 2016 and was on medical leave into 2017. She said she did not have a stable address during that time. She stated that she made an appointment with a credit counselor through her employer's financial assistance program. She noted that she is a single mother. (Item 2)

In March 2020, Applicant was interviewed by a government investigator. During that background interview, Applicant discussed her delinquent debts, including taxes. She discussed her Federal and state income tax returns. She told the investigator that she did not file her 2016 and 2017 tax returns because she had not received a W-2 Form. She was uncertain of the amount she owed for 2016. As of the date of the interview, she had not filed those returns. (Item 8)

In her September 2022 Answer to the SOR, Applicant repeatedly stated that her inability to pay her delinquent debts was due to periods of unemployment, being a single mother, having no health insurance, and suffering from medical disabilities. She stated that in August 2022, she started working with a debt management company and established a repayment plan for her debts. (Item 2)

Based on Applicant's admissions and credit bureau reports (CBR) from November 2022, March 2022, and April 2019, the SOR alleged 13 delinquent debts totaling \$34,365 that became delinquent between 2014 and 2019. It also alleged that she filed a Chapter 7 bankruptcy in 2013 and failed to file Federal and state income taxes for 2016. (Items 4, 5, and 6) The status of these allegations is as follows:

1.a: In August 2013, Applicant filed a Chapter 7 bankruptcy. In December 2013, the court discharged \$27,000 of delinquent debts. (Item 7)

1.b through 1.n are debts in collection or charged off. They consist of consumer debts; an unpaid lease; medical bills; a personal loan; credit cards; a car loan; cell phone bill; and an insurance premium. Applicant included all of them in her August 2022 payment plan. The total amount owed is approximately \$34,365.

1.o: Withdrawn.

1.p: Applicant has not filed her 2016 Federal income tax return. She stated that she did not file it because in December 2016 she was evicted from her residence and did not have a mailing address. (Item 2)

1.q: Applicant has not filed her 2016 state income tax return, for the reason stated above.

Applicant participated in financial counseling. Her annual salary for 2022 was about \$125,000. She submitted a written budget for June 2022. Her net monthly income was \$9,600 and monthly expenses were \$8,200, leaving \$1,400 remaining. (Item 2)

Applicant takes full responsibility for her delinquent debts and tax filings. She acknowledged that "she should have been more responsible." (Item 2) She intends to rectify her debts. (Item 2)

Policies

The national security eligibility 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DOD on June 8, 2017.

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for a security clearance.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 describes conditions that could raise security concerns. Three may be potentially disqualifying in this case:

- (a) inability to satisfy debts;
- (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 has a history of financial problems. She filed a Chapter 7 bankruptcy in 2013 and discharged about \$27,000 of delinquent debt. Since then, she has accumulated about \$34,000 of delinquent debts, which she has been unable to resolve. She also failed to file Federal and state income tax returns for 2016. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 includes conditions that could mitigate security concerns arising under this guideline. The following 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 (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
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant's delinquent debts have been outstanding since 2014 and continue to be unresolved, which casts doubt on Applicant's reliability. AG ¶ 20(a) does not apply. Applicant attributed her delinquent debts to numerous periods of unemployment and her medical disabilities. Those were circumstances beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She did not provide evidence to demonstrate that she attempted to responsibly manage her debts as they were accumulating, or address them until receiving the SOR more than three years after starting her current job. AG ¶ 20(b) partially applies.

Applicant provided evidence that she participated in financial counseling when she entered into a payment plan in August 2022. She submitted a budget that confirms she earns a high salary. However, there is insufficient evidence from which to conclude there are clear indications that her delinquent debts are coming under control. AG ¶ 20(c) minimally applies. She submitted documentation that she made an effort to establish a plan to resolve her debts, but she did not provide evidence that she made any payments into the plan, despite being notified of an opportunity to do so after she received the FORM in November 2022. AG ¶ 20(d) does not apply. There is no evidence that she has

taken steps to resolve her outstanding Federal and state income tax returns for 2016 and 2017. AG ¶ 20(g) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 facts and circumstances surrounding this case. Based on the limited evidence and the lack of an established track record of responsible financial management, Applicant failed to meet her burden to mitigate the security concerns raised under the guideline for financial considerations. Continuation of her financial issues is likely, and the potential for coercion or duress remains undiminished.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a through 1.n:	Against Applicant
Subparagraph: 1.o:	Withdrawn
Subparagraphs: 1.p and 1.q:	Against Applicant

Conclusion

Considering 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. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge