



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



In the matter of:)	
)	
)	ISCR Case No. 22-02131
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

August 7, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 14, 2022, Applicant submitted a security clearance application (e-QIP). (Item 2.) On December 13, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on December 19, 2022. (Item 1.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on March 8, 2023. A complete copy of the File of Relevant Material (FORM), containing eight Items was received by Applicant on March 22, 2023. She was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA assigned the case to me on July 21, 2023. Items 1 through 8 will hereinafter be referred to as Government Exhibits 1 through 8.

Findings of Fact

Applicant is 54 years old. She is married and has at least one child. She has a high school diploma, and no prior military service. She is employed by a defense contractor as a Enrollment and Billing Representative. She is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

The SOR alleges that the Applicant is indebted to five creditors totaling approximately \$44,506, which includes four delinquent accounts that have been charged off, as well as eight years of delinquent Federal back taxes. Applicant admits each of the allegations set forth in the SOR. Applicant's credit reports dated July 23, 2022; and November 1, 2022, confirm the indebtedness. (Government Exhibit 3 and 4.)

Applicant has a long history of financial problems beginning in 2012 when she failed to pay income taxes owed to the Federal Government. This pattern continued for eight years, 2013, 2014, 2015, 2016, 2017, 2019, and 2021, amassing a \$27,079 delinquent debt owed to the Federal Government for back taxes. Applicant has not resolved this debt.

In response to interrogatories regarding her Federal back taxes and whether she currently has an installment or other repayment agreement established, Applicant answered, "NO, but noted that it was "in process." Ten years have passed since she failed to pay her Federal back taxes, and she is still in the process of setting up a payment plan. (Government Exhibit 7.)

More evidence of not meeting her financial obligations is the fact that in June 2016, Applicant filed for Chapter 13 bankruptcy which was dismissed in November 2018. Then in November 2019, she filed for Chapter 7 bankruptcy and her debts were discharged in March 2020.

The following delinquent debts set forth in the SOR are also of security concern:

1.c. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$8,162. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

1.d. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$7,493. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

1.e. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$433. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

1.f. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$439. There is no documentary evidence to show that Applicant has done anything to resolve the debt. The debt remains owing.

Policies

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 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 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 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.

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 clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The security concern for 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 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 under AG ¶ 19. Four are potentially applicable in this case:

- (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 has incurred delinquent debts including back taxes that she has not been able to pay. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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;

(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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;

(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 nothing in the record to demonstrate that Applicant has made efforts to mitigate the Government's concerns under Guideline F. Without documentary evidence substantiating her assertions that she has been making payments to the creditors, that she is currently financially responsible, and that she is able to meet her future financial obligations, Applicant has not carried her burden of proof to establish mitigation of the security concerns alleged in the SOR. Applicant provides no reasonable excuse for her excessive indebtedness or why it still exists when she has been employed on a full-time basis since October 2021. If she has started to repay any of her creditors, she has submitted no documentary evidence to substantiate this. From the limited evidence presented, her debts remain delinquent and owing. Applicant's inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. Accordingly, Applicant does not meet the requirements to access classified 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 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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concerns.

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.g.	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge