



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



In the matter of:)
)
) ISCR Case No. 12-09389
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

07/07/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On December 15, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

On January 21, 2015, Applicant answered the SOR, and she elected to have her case decided on the written record in lieu of a hearing. She did not submit any documents. On April 30, 2015, Department Counsel submitted the Government’s file of relevant material (FORM) and it was mailed the same day. Applicant received it on May

12, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did not object to any of the documents submitted by the Government, and they are admitted. Applicant provided a response to the FORM, which was included in the record without objection. The case was assigned to me on June 26, 2015.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.i, 1.l, and 1.m. She denied the remaining allegations. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. She has not served in the military. She married in 1974 and divorced in 1978. She has a grown daughter. She remarried in 1996. She has worked for the same federal contractor since 1999.¹

Applicant and her husband filed Chapter 7 bankruptcy in 2004 and their debts were discharged the same year. Approximately \$41,000 of delinquent debt was discharged, the bulk of which was due to credit card charges and a lien placed by one of the credit card companies.² Applicant attributed the bankruptcy to her husband being laid off from his job and earning less in his new job.

The SOR alleges 15 delinquent debts totaling approximately \$25,853. In 2009 Applicant's husband was laid off again from his job, and they experienced financial difficulties when he began working at a lower-paying job. Applicant related that in 2011 her mother was ill, and Applicant did not concentrate on her finances. Her mother passed away in 2012. Then her aunt was diagnosed with cancer and passed away in November 2013. Applicant indicated in her SOR answer that she is "just now in a position to resume clearing and paying these debts." Credit reports from October 2014, February 2012, and April 2007 substantiate the alleged delinquent debts.³

Applicant has held a security clearance since 2002. In March 2007, she completed a security clearance application (SCA) and disclosed her 2004 bankruptcy. In February 2012, she completed an updated SCA and disclosed she had delinquent debts. She stated it was due to her husband's change in income and gas prices. She stated: "Currently in the process of working with creditors to bring them current."⁴ In her personal subject interview in June 2012, Applicant acknowledged her delinquent debts

¹ Item 2.

² Item 7.

³ Items 4, 5, and 8.

⁴ Item 2 and 6.

in SOR ¶¶ 1.b, 1.c, 1.d, 1.h, 1.i, 1.k, 1.m, 1.o, and 1.p and indicated she would contact the creditors and make arrangements to bring the debts current.⁵

In her answer to the SOR, Applicant indicated that the creditors in SOR ¶¶ 1.b, 1.l and 1.m were for the same debt. She did not provide documents to substantiate her position. She indicated she would pay half of the debt with her tax refund and work out a payment plan to immediately begin to clear the debt in full. In response to the FORM, she indicated she had paid 60% of the debt and hoped to have it completely paid in four months. She did not provide documented proof of her payments.

Applicant indicated in her answer to the SOR and response to the FORM that she “cleared the debts” in SOR ¶¶ 1.e and 1.k; paid the debts in SOR ¶¶ 1.d, 1.f and 1.g; paid the debt in SOR ¶ 1.p, which was removed from her credit report; and disputed the debt in SOR ¶ 1.j with the creditor, and it was removed from her credit report. Applicant did not provide supporting documents for these assertions.

Applicant indicated she has contacted the creditor in SOR ¶ 1.c and will have the debt “cleared” in approximately four months. She indicated she is contacting the creditor in SOR ¶ 1.h to dispute the debt. She indicated she is researching the validity of the debts in SOR ¶¶ 1.i, 1.n and 1.o.

Applicant did not provide evidence of financial counseling, a current budget, or other information regarding the current state of her finances.

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 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(c), 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 access to classified information will be resolved in favor of national security.” In reaching this

⁵ Item 3.

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

Section 7 of Executive Order 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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and

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

Applicant had \$41,000 of consumer debt discharged in bankruptcy in 2004. She has 15 delinquent debts alleged in the SOR totaling approximately \$25,853 that are unresolved. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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.

After having her debts resolved through bankruptcy in 2004, Applicant again experienced financial problems and has numerous delinquent debts that are unresolved. Her delinquent debts are unpaid and therefore recent. There is insufficient evidence to conclude her financial problems occurred under unique circumstances and are unlikely to recur. Her finances cast doubt on her current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant indicated her financial problems began again in 2009 when her husband lost his job and their income was reduced. This was a condition beyond their control. She also explained that her mother and aunt were ill, and therefore, she did not focus on her finances. Although she may have been distracted, she was already on notice that maintaining her finances was a security concern. Her distraction was within her control. For the full application of AG ¶ 20(b), there must be evidence that Applicant acted responsibly under the circumstances. She completed her SCA in February 2012 and had a background interview in June 2012. Applicant did not provide sufficient

evidence of actions she took to resolve her delinquent debts after she was on notice of the security concern. AG ¶ 20(b) minimally applies.

There is no evidence to conclude Applicant has received financial counseling. She indicated she has paid, "cleared," or resolved certain delinquent debts, but there is no documented proof to support her position. She has not provided evidence as to her current finances. I cannot find there are clear indications that her financial problems are being resolved or are under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputes some debts, but did not provide the basis to dispute the legitimacy of the past-due debts, documented proof to substantiate the basis of the dispute, or evidence of actions she has taken to resolve the issue. AG ¶ 20(e) does not 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(a):

- (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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 58 years old. She has a history of financial problems, which include a bankruptcy in 2004 and recent delinquent debts that remain unresolved. She did not provide documentation to support payments she indicated she made on debts. Applicant does not have a consistent track record to show she is resolving her financial problems. There is insufficient evidence to conclude Applicant has met her burden of persuasion. 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 she

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.p:	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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge