



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



In the matter of:)	
)	
)	ISCR Case No. 12-10219
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2015

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 April 18, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF acted 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 adjudicative guidelines (AG).

Applicant answered the SOR on May 18, 2015, 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 27, 2015. The evidence

included in the FORM is identified as Items 3-6 and is admitted into the record. The FORM was mailed to Applicant, who received it on September 14, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted exhibit AE A (with attachments 1-10), which was admitted into evidence without objection. The case was assigned to me on November 5, 2015.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the debts listed in the SOR. 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.¹

Applicant is 31 years old. She has worked for a federal contractor since March 2010. She is married with two children, ages eight and four. As of August 2015, she has a protective order in place against her husband because of alleged abuse. She has a high school diploma and is pursuing a bachelor's degree. She served in the Navy inactive reserve from 2002 to 2007 and held a security clearance then.²

The SOR lists 18 delinquent debts³ totaling approximately \$25,637. The debts included collection accounts, charged-off accounts, past-due accounts, judgments, and a federal tax debt. The debts are supported by credit reports from March 2012 and October 2014, answers in Applicant's security clearance application from February 2012, and by her statements to a defense investigator in April 2012.⁴

Applicant financial difficulties arose as a result of unemployment and under employment for both her and her husband from 2007 to 2009. In 2009, her husband obtained a higher-paying job, and in 2010 she obtained her current employment, which is a much better paying job. She is currently separated from her husband and claims that he emptied out their joint bank account before leaving their home. She thought she was receiving financial counseling, but it turned out the person was trying to sell her insurance. There is no evidence of a current budget or an earnings and expense statement.⁵

¹ Item 2.

² Item 2; AE A (attachment 5).

³ SOR ¶¶ 1.b and 1.q are duplicate debts. ¶ 1.q is resolved in favor of Applicant.

⁴ Items 3-6.

⁵ Items 2, 4; AE A.

The status of the debts is as follows:

SOR ¶ 1.a (past-due account for \$2,811):

Applicant claims she paid this debt and stated in both her May 2015 answer and her October 2015 response to the FORM that she would supply proof of payment. She failed to supply any supporting documentation. This debt is unresolved.⁶

SOR ¶ 1.b (collection account for \$1,074):

Applicant claims she set up payment plan for this debt. She supplied documentation showing establishment of a settlement plan where she is to pay \$107 monthly beginning in May 2015. She failed to supply any supporting documentation showing payments have been made. This debt is unresolved.⁷

SOR ¶ 1.c (charged-off account for \$920):

Applicant claims she set up payment plan for this debt. She supplied documentation showing establishment of a settlement plan where she is to pay \$123 monthly beginning in May 2015. She failed to supply any supporting documentation showing payments have been made. This debt is unresolved.⁸

SOR ¶ 1.d (charged-off account for \$660):

Applicant provided documentation showing this debt was satisfied in May 2015. This debt is resolved.⁹

SOR ¶¶ 1.e, 1.g, 1.j - 1.l (collection accounts for \$335; \$170; \$144; \$75; \$40):

Applicant provided documentation showing she reached a payment agreement with these creditors and she made the first \$80 monthly payment in May 2015. She did not provide documentation showing subsequent monthly payments. These debts are unresolved.¹⁰

⁶ Item 2; AE A.

⁷ Item 2 (enclosure 2); AE A.

⁸ Item 2 (enclosure 3); AE A.

⁹ Item 2; AE A (attachment 9).

¹⁰ Item 2 (enclosure 4); AE A.

SOR ¶ 1.f (collection account for \$323):

Applicant provided documentation showing this debt was satisfied in May 2015. This debt is resolved.¹¹

SOR ¶¶ 1.h, 1.i (collection accounts for \$161; \$151):

Applicant claimed she paid both debts and committed to providing proof of payments. She did not provide documentation of payment of either debt. These debts are unresolved.¹²

SOR ¶ 1.m (judgment for \$3,745):

Applicant provided documentation showing this judgment was satisfied in April 2015. This debt is resolved.¹³

SOR ¶¶ 1.n, 1.o, 1.p (judgment and collection accounts for \$1,031; \$2,836; \$1,161):

Applicant claims she set up payment plan for these debts. She supplied documentation showing establishment of settlement plans where she is to pay \$105; \$250; and \$273 monthly beginning in May 2015. She failed to supply any supporting documentation showing any further payments. These debts are unresolved.¹⁴

SOR ¶ 1.r (federal tax debt for \$10,000):

Applicant provided documentation showing that her 2014 federal tax refund in the amount of \$8,324 was involuntarily applied to her 2010 federal tax debt of \$11,806 leaving a balance owed of \$3,482. In her answer, she claims that she is working with the IRS in an attempt to make payment arrangements on the debt. In her FORM response, she claims that her husband is taking care of this issue. There is no proof of payment of the remaining balance or of an established payment plan. This debt is unresolved.¹⁵

¹¹ Item 2 (enclosure 5).

¹² Item 2; AE A.

¹³ Item 2 (enclosure 6).

¹⁴ Item 2 (enclosures 8, 9); AE A (attachment 10).

¹⁵ Item 2 (enclosure 9); AE A.

Applicant provided a character letter from a coworker who worked with her on a program. He described her excellent support for the program and stated she was a loyal and trustworthy employee.¹⁶

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(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 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.

¹⁶ Item 2 (enclosure 1).

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

AG ¶ 18 expresses the security concern for financial considerations:

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 all of them under AG ¶ 19 and the following potentially apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both the 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, 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; and

(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.

Applicant's debts are recent and most remain unresolved. She did not provide sufficient evidence to show that financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that some debts were due to circumstances beyond her control (unemployment, underemployment, separation from husband, husband taking funds from bank). For this mitigating condition to apply, she must also show responsible action toward resolving the debts. She paid three of the debts and showed that she set up payment plans for four other accounts. However, she only provided proof of one monthly payment on one of these accounts in May 2015. Additionally, her federal tax debt remains. She receives some credit for her efforts under AG ¶ 20(b). She attempted to receive some financial counseling, but it turned out to be a sales pitch for insurance. She failed to document that her debts are under control by showing proof of payments under her payment plans. She has made some efforts to pay three of the outstanding debts, but proof of further efforts is lacking. She did not provide documented proof of the debts she claimed were already paid (SOR ¶¶ 1.h, 1.i). Her federal tax debt remains unpaid. Although the IRS captured a recent tax year refund to reduce the debt, this does not constitute a good faith effort by Applicant to pay the debt. AG ¶¶ 20(c) and 20(d) partially apply. 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 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 the circumstances that led to Applicant's financial problems and her personal situation. Despite the presence of some mitigation, she failed to show 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n – 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	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