



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



In the matter of:)
)
) ISCR Case No. 13-00544
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2013

Decision

COACHER, Robert E., 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 June 4, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 (AG), effective within the DOD on September 1, 2006.

Applicant answered the SOR on June 27, 2013, and elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 18, 2013. The FORM was mailed to Applicant

and she received it on September 23, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She declined to submit any additional information. The case was assigned to me on November 6, 2013.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations in SOR. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 45 years old. She is married and has one adult child and a stepchild. She has worked for her current employer, a defense contractor, since July 2011. She has had past periods of unemployment including: December 2010 to July 2011, and June 2007 to October 2008. She has a bachelor's degree. She has no military service, but has held a security clearance in the past.¹

The debts listed in the SOR are supported by credit reports from November 2011 and March 2013. The SOR sets out nine debts amounting to about \$43,215. Applicant's finances became a concern because of her periods of unemployment described above, her own unspecified medical issues from June 2007 to June 2008, and caring for her parents because of their medical issues in 2008. By 2011, her parents were self-sufficient again. She is now assisting her daughter with college expenses and with some medical issues. Applicant states that all these financial issues have prevented her from addressing the SOR-related debts.²

The delinquent debt alleged in SOR ¶ 1.a is a pet-related account in the amount of \$571. Applicant admits purchasing the account, but claims she attempted to cancel the account in early 2011 when she no longer possessed the pet. She failed to provide any documentation concerning this account. This debt is unresolved.³

The delinquent debt alleged in SOR ¶ 1.b is a medical account in the amount of \$295. Applicant admits this account, although she believes it should have been paid by her insurance company. She resubmitted the claim to her insurance company in 2007 and thought it was resolved. When she examined her credit report in 2011, she discovered that the debt was not resolved. She contacted the creditor, but took no further action. She failed to provide any documentation concerning this account. This debt is unresolved.⁴

¹ Item 5.

² Items 4, 6.

³ Items 4, 8.

⁴ Items 4, 8.

The delinquent debts alleged in SOR ¶¶ 1.c - 1.e and 1.g – 1.i are credit card accounts in the amounts of \$15,000, \$6,701, \$3,464, \$6,409, \$9,286, and \$1,158 respectively. Applicant admits to the underlying debt for each account. She stated she tried to use her company’s “financial resources to consolidate the balances” on SOR debts ¶¶ 1.c and 1.d, but the effort was not successful. She contacted the creditor for SOR debt ¶ 1.e in early 2012 to establish a payment plan, but because the creditor required her to set up automatic draft payments from her bank account, she refused to accept this term and the account remains unresolved. The remaining accounts also are unresolved. Applicant’s response to these accounts is that she requires “debt assistance to make arrangements to pay off outstanding balances.” She does not describe what debt assistance she is seeking or when she will seek it. These debts are unresolved.⁵

The delinquent debt alleged in SOR ¶ 1.f is a telecommunications account in the amount of \$331. Applicant admits the debt, but claims a dispute about returning equipment to the creditor. She later sent back the equipment and “hoped this was settled with [the creditor].” She failed to provide any documentation concerning this account. This debt is unresolved.⁶

Applicant’s financial worksheet indicates that she has a disposable income after paying all expenses and debt obligations at the end of each month of about \$1,200. She indicated that she recently paid the balances on five credit cards not related to the SOR, but did not supply any documentation.⁷

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.

⁵ Item 4, 6 (p. 16), 7-8.

⁶ Items 4, 6 (p. 10), 8.

⁷ Item 6 (p. 15, 22).

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.

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 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;
- (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.

All of Applicant's debts remain unresolved. She did not provide sufficient evidence to show that the debts are unlikely to recur. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence of her unemployment and of her own and her family's medical issues, which contributed to her financial problems. However, in order for mitigating condition AG ¶ 20(b) to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. Although she recently contacted at least one creditor to settle her debt and apparently sought some assistance from an employer-sponsored debt relief program, she provided insufficient evidence to show she acted on the remaining debts. The totality of her actions does not rise to the level of responsible behavior under these circumstances. I find AG ¶ 20(b) partially applies.

Applicant presented evidence of some financial counseling; however, there is no clear evidence that Applicant's financial problems are being resolved or under control because the debts remain unpaid. There is no evidence that she has made a good-faith effort to pay the debts. I find AG ¶¶ 20(c) partially applies and 20(d) does not apply. Applicant failed to document her dispute concerning SOR ¶¶ 1.a and 1.f, therefore, AG ¶ 20(e) does not apply to those debts.

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 Applicant's periods of unemployment and family medical problems and how they contributed to her debt problems. However, she has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve her debts. Therefore, she failed to provide sufficient evidence to mitigate the security concerns.

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.i:	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