



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



In the matter of:)
)
) ISCR Case No. 14-02318
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On April 15, 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 2, 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 November 9, 2015. The evidence

included in the FORM is identified as Items 3-10 (Items 1 and 2 are pleadings and transmittal information). The FORM was mailed to Applicant who received it on December 11, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She timely submitted Applicant exhibits (AE) A-I and she did not object to any Government exhibits. Items 3-10 and AE A-I are all admitted into the record. The case was assigned to me on March 22, 2016.

Findings of Fact

In Applicant's answer to the SOR, she admitted ¶¶ 1.c-1.e, and 1.i. She denied ¶¶ 1.a-1.b, 1.f-1.h. 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.

Applicant is 35 years old. She is divorced and has one child. She has worked for a federal contractor since July 2011. She was unemployed from February 2007 to February 2008 and from July 2004 to March 2005. She has high school diploma. She has never served in the military.¹

The SOR lists seven delinquent debts totaling approximately \$7,527, which includes a state tax lien in the amount of \$1,910 and a state tax debt for tax year 2011 in the amount of \$1,793. The SOR also alleges Applicant failed to file her 2012 state and federal income tax returns. Applicant stated the reason for her financial difficulties was because she was hospitalized for a severe medical condition for two weeks in October 2012 and was home recuperating from her condition until March 2013. During her recovery period she used all of her accumulated sick leave, vacation leave, and short-term disability entitlements. After these benefits were exhausted her family was required to rely solely on her husband's income, which was insufficient to pay their obligations.²

The debts are supported by credit reports from October 2015 and November 2013, state judgment and lien filings, and by Applicant's admissions. The status of the debts is as follows:³

SOR ¶¶ 1.a-1.b (failure to file state and federal income tax returns for 2012):

Applicant failed to timely file her federal and state income tax returns for tax year 2012. She told a defense investigator during her November 2013 interview that she would file both returns within the next month. She submitted documentary evidence showing that she filed both her federal and state 2012 tax return in April 2014. The same evidence indicates that she owed tax liability to both the state and the IRS for that

¹ Item 3.

² Items 2, 6-7, 10-11.

³ Items 2, 6-7, 10-11.

year. There is no evidence showing payment of either the federal or state tax liability for 2012.⁴ She experienced her medical condition before her 2012 taxes returns were due in 2013. She did not offer an explanation for why she failed to file until April 2014.⁵

SOR ¶¶ 1.c-1.d (state tax lien and state tax debt for 2011: \$1,910; \$1,793):

Applicant admitted to both the state tax lien (filed in April 2013) and the state tax liability for tax year 2011. Additionally, documentary evidence showed another state tax lien was filed in January 2015.⁶ There is no documentary evidence of payment. She provided a statement from a collection company showing that on February 1, 2016, her balance for her 2013 state tax debt was \$816. She did not show proof of payment of that amount. These debts are unresolved.⁷

SOR ¶¶ 1.e-1.f (medical collection account and consumer collection account \$219; \$304):

Applicant provided documentary evidence that both debts have been paid. SOR ¶ 1.e is a medical debt that was paid in October 2015. SOR ¶ 1.f is a consumer debt that was paid in May 2015. Both debts are resolved.⁸

SOR ¶¶ 1.g-1.h:

Applicant denied both of these debts, claiming they had been paid. She provided documentation showing the collection agency for SOR ¶ 1.h closed the account, but that correspondence also stated that the debt was returned to the original creditor. She failed to offer documentary evidence showing payment for either debt. These debts are unresolved.⁹

⁴ Since the nonpayment of taxes for 2012 was not specifically alleged in the SOR, I will not consider this evidence as disqualifying conduct. I will consider the evidence for determining the applicability of any mitigating circumstances and when I weigh the whole-person factors.

⁵ Items 2, 11; AE A-B.

⁶ Since this 2015 tax lien was not specifically alleged in the SOR, I will not consider this evidence as disqualifying conduct. I will consider the evidence for determining the applicability of any mitigating circumstances and when I weigh the whole-person factors.

⁷ Items 2, 6, 7, 10-11; AE H.

⁸ Items 6-7; AE E-F.

⁹ Items 7; AE G.

SOR ¶ 1.i:

Applicant admitted this debt. She claimed that a payment plan would be made. She failed to produce evidence of any payment plan or proof of payment. This debt is unresolved.¹⁰

Applicant did not provide any information about her current financial status or a budget. However, she provided proof that she timely filed her 2013 federal and state tax returns in April 2014. There is no evidence that she sought financial counseling.¹¹

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

¹⁰ Items 2, 11.

¹¹ Items 2, 11; AE C-D.

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;
- (c) a history of not meeting financial obligations; and
- (g) failure to file Federal, state . . . income tax returns as required

Applicant has delinquent debts that remain unpaid or unresolved. She also failed to file her federal and state income tax returns for 2012 until April 2014. I find all 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;

(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 debts 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 remain unresolved, except for SOR ¶¶ 1.e-1.f, which were paid. She did not provide sufficient evidence to show that financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant's medical condition, which caused her to use all her job benefits and ultimately lose her job, were circumstances beyond her control. She did not present sufficient evidence to show responsible action to address the debts. To date, only two debts have been paid and she filed her 2012 tax returns a year late. I find AG ¶ 20(b) partially applies. Applicant presented no evidence of financial counseling. She presented evidence that she filed her 2012 federal and state tax returns, but no evidence to show payment for her 2012 federal tax debt or 2011 state tax debt or toward the 2013 state tax lien. These tax issues have not been resolved. Except for SOR ¶¶ 1.e-1.f, the remaining debts are unresolved. I find AG ¶ 20(d) applies to SOR ¶¶ 1.e and 1.f, but not to the remaining allegations. AG ¶ 20(c) does not apply. She also failed to document any dispute of the alleged debts. 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. Applicant has not shown 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.d:	Against Applicant
Subparagraphs 1.e – 1.f:	For Applicant
Subparagraphs 1.g – 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