



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



In the matter of:)
)
) ISCR Case No. 12-00217
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2014

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 May 30, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR on July 1, 2014, and requested a hearing before an administrative judge. The case was assigned to me on September 25, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014, and the hearing was convened as scheduled on October 9, 2014. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence

without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE D, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 20, 2014.

Findings of Fact

Applicant admitted the following SOR allegations: ¶¶ 1.a – 1.e, 1.g, 1.i – 1.k, 1.m, 1.o, 1.q – 1.r, and 1.t. She denied ¶¶ 1.f, 1.h, 1.l, 1.n, 1.p, and 1.s. These admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 54-year-old employee of a defense contractor. She has worked for various contractors, performing the same duties, since 1985. She has a GED. She is divorced and has one adult child. She served briefly in the Air Force in 1977, but was discharged for medical reasons. She has held a security clearance since 1985.¹

The SOR alleges a judgment, two tax liens (federal and state), and 17 other delinquent debts. The total debt amount is in excess of \$60,000. The debts were listed in various credit reports from June 2011, February 2013, and March 2014.²

Applicant's financial problems arose in 2009 when she ended a relationship with a boyfriend who was living with her and who contributed to paying their mutual expenses including the mortgage payments. The boyfriend stopped contributing and the obligations fell to Applicant who could not afford the payments based upon her sole income. Additionally, she helped pay some of her son's expenses. He is a disabled veteran. Also, her most recent contractor-employer decreased her hourly wages from \$29 per hour to \$26.94 per hour. She has not sought financial counseling because she believed it was too expensive. She has been making regular payments on a non-SOR-related debt since May 2014 in the total amount of \$1,878. None of the SOR debts are paid or are currently being paid. When asked about her plan to address the debts, Applicant stated that she planned to pay each one, one at a time, but she had not begun this plan yet. The current status of the debts is as follows:³

SOR ¶ 1.a (Judgment \$535):

This judgment was entered in March 2011. It remains unpaid. This debt is unresolved.⁴

SOR ¶¶ 1.b – 1.c (Tax liens \$3,829 and \$7,592):

¹ Tr. at 4, 4, 24-25; GE 1.

² GE 2-4.

³ Tr. at 30, 32-33, 38-39; GE 2: AE A, C.

⁴ GE 4.

Applicant admitted that she underpaid her withholding contributions for tax years 2006 and 2007 to both the state and federal governments. Consequently, she owed more for those years than was withheld from her pay. She originally claimed that she was paying under a payment plan with the IRS; however, she failed to produce evidence of any plan. These liens are unresolved.⁵

SOR ¶¶ 1.d – 1.g; 1.j; 1.l – 1.m; 1.o; 1.r – 1.t (Consumer debts \$139; \$596; \$218; \$59; \$434; \$238; \$1,217; \$1,500; \$570; \$53; and \$2,145):

These accounts became delinquent in 2011 or 2012. They are all outstanding and no payment plans are in place. These debts are unresolved.⁶

SOR ¶ 1.h (Mortgage \$40,427):

Applicant's mortgage became delinquent in 2008 when she could not make continuous full payments. She sent in partial payments when she could, but the lender did not accept them. The property was foreclosed, but she does not know when that occurred. This debt is unresolved.⁷

SOR ¶¶ 1.i; 1.n (Checks returned for insufficient funds \$893 and \$49):

These insufficient accounts were reported in 2009 and 2011. They remain unpaid. These debts are unresolved.⁸

SOR ¶¶ 1.k; 1.p – 1.q (Medical accounts \$36; \$170 and \$39):

These delinquent accounts were reported in 2008. They remain unpaid. These debts are unresolved.⁹

According to her personal financial statement completed in July 2013, Applicant listed her net monthly income as \$3,102 and her expenses and obligations as \$2,719, with a remainder of \$383. Applicant presented 11 character letters from friends, coworkers, supervisors, and her union. They all commented that Applicant is a loyal employee, is trustworthy, and they support her efforts to retain her security clearance.¹⁰

⁵ Tr. at 31; GE 2.

⁶ Tr. at 33; GE 3-5.

⁷ Tr. at 28; GE 4.

⁸ GE 3-5.

⁹ GE 3-5.

¹⁰ GE 2; AE B, D.

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 that 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 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, 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 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 about 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* Executive Order 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 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has a judgment, two tax liens, and significant other delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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.

Applicant's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant found herself in a difficult financial situation when her boyfriend, who was sharing living expenses with her, ended their relationship and his contributions. She also expended her resources to assist her son, a disabled veteran, with his financial difficulties. These were circumstances beyond her control. However, I am unable to find that she acted responsibly in dealing with her debt. Aside from making payments toward a debt outside the SOR, she failed to present evidence that she took action on any of the SOR debts and tax liens. AG ¶ 20(b) is partially applicable.

Applicant did not seek financial counseling because of the expense it might involve. The evidence does not support that there are clear indications that her debts are being resolved, nor was there evidence of good-faith efforts to pay or resolve the debts.¹¹ AG ¶ 20(c) and ¶ 20(d) do not apply.

Applicant failed to produce sufficient documentary evidence supporting any disputed debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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(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

¹¹ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the predecessor mitigating condition to AG ¶ 20(d)], an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [AG ¶ 20(d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 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.

I considered Applicant's military service, the good character evidence presented in the statements offered, and the circumstances by which she became indebted. However, I also considered that she has made little effort to resolve her financial situation. She has not established a meaningful financial track record of debt management, which causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a – 1.t:	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