



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-10817

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

August 25, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant discharged her debts through Chapter 7 bankruptcies filed in 2006 and 2015. However, she failed to show she has mitigated the financial concern raised by her long history of indebtedness. Evidence shows that despite the discharge of debts through Chapter 7 bankruptcy, she continues to spend more than she earns each month. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On May 8, 2012, Applicant submitted a security clearance application (SF-86). (Item 2.) On February 26, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken 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 for Determining Eligibility for Access to Classified Information*.

Applicant answered the SOR on March 18, 2016. (Item 2.) She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 19, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 12 Items, was mailed to Applicant on September 19, 2016, and received by her on September 27, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant responded to the FORM in a letter dated November 1, 2016. I marked her submission Applicant Exhibit (AE) A, and it was admitted without objection. DOHA assigned the case to me on August 2, 2017. Items 1 through 12 are admitted into evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All security clearance decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's security clearance eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Procedural Ruling

Department Counsel made a motion in the FORM to amend the SOR by adding ¶ 1.h in order to conform to the evidence, pursuant to Directive ¶ E3.1.17. It reads:

1.h. In July 2015, you filed a petition for Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the [location omitted]. In October 2015, the dischargeable debts were discharged.

Applicant expressed no objections to the amendment. She denied this allegation in part, and sought to clarify her history of filing bankruptcy in AE A. The motion to amend is granted.

Findings of Fact

Applicant is 45 years old and married since 2002. She has worked for her current employer, a government contractor, since 2001. (Item 3.)

The SOR alleged that Applicant was delinquent on five debts in the total amount of \$29,406. Additionally, she was alleged to have filed: a Chapter 7 bankruptcy petition in 2006, which was discharged in 2008; a Chapter 13 petition that was converted to Chapter 7 bankruptcy in 2014; and a petition for Chapter 7 bankruptcy in July 2015, which was discharged in October 2015. (Item 1; FORM.) Applicant admitted SOR ¶¶ 1.c, and 1.d. She denied SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.g, and 1.h. (Item 2; AE A.)

In 2005 Applicant's husband lost his job as a truck driver. He was unemployed for approximately one year. Additionally, due to financial problems and her husband's infidelity, Applicant separated from her husband for about six months in 2006. (Item 9 at 2.) As a result, they filed for Chapter 13 bankruptcy in 2006, as alleged in SOR ¶ 1.c. The petition for bankruptcy was converted to a Chapter 7 in December 2007. Their debts were discharged in April 2008. Applicant estimated \$30,000 worth of debt was discharged. (Item 8; Item 9 at 2.)

Applicant's husband was again unemployed for a "few months" in 2011. (Item 9 at 3.) During that time, they became delinquent on a loan for a truck purchased for her husband in June 2008. It was repossessed, and Applicant was liable for the remainder. The truck loan was initially through the creditor identified in SOR ¶ 1.a but was acquired by the creditor identified in SOR ¶ 1.b.¹ The second creditor sought a judgment against Applicant after she and her husband defaulted on the loan. As a result of the judgment, Applicant's pay was garnished at \$200 per week, "leaving Applicant only \$100 in her paycheck." (Item 9 at 3.) Applicant and her husband sought relief by filing a joint petition for Chapter 13 bankruptcy in February 2012, as alleged in in SOR ¶ 1.d. They paid \$15,006 to the trustee during their Chapter 13, and \$11,158 was distributed to their creditors. (Item 5; Item 6; Item 7; Item 12.) Applicant's joint Chapter 13 was converted into a Chapter 7 in 2014. As a letter from Applicant's bankruptcy attorney explains, it was given a separate case number in July 2015 when she chose to file individually instead of jointly with her husband. The 2015 Chapter 7 filing (alleged in in SOR ¶1.h) stems from the same initial filing in 2012. (AE A; Item 7.)

Applicant's 2015 Chapter 7 bankruptcy petition identified \$33,224 in total liabilities including: the remainder owed on the repossessed truck discussed above (SOR ¶¶ 1.a and 1.b); two accounts owed to a bank (alleged in SOR ¶¶ 1.e and 1.f); and a delinquent cell phone debt owed to a service provider in the amount of \$426 (alleged in SOR ¶ 1.g.). These debts were discharged in October 2015. (Item 11; Item 12; AE A.)

Applicant's Chapter 7 bankruptcy filing reflects that she has a net income of \$2,632 monthly. Her monthly expenses are \$4,494. She has a negative net monthly income of \$1,861. (Item 12.) No character references were submitted to describe Applicant's judgment, trustworthiness, integrity, or reliability. I was unable to evaluate

¹ SOR ¶ 1.a and ¶ 1.b are alleged to be owed to different creditors, in different amounts. However, Applicant credibly avers that they are the same debt. Further, the credit reports reflect that these debts were both automobile loans opened in June 2008. (Item 5; Item 6; Item 12.)

her credibility, demeanor, or character since she elected to have her case decided without a hearing.

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 useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 national security eligibility will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15, states an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or 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 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes one condition that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations.

Applicant's credit reports and bankruptcy filings demonstrate significant, and constant indebtedness since 2006, despite receiving a discharge of debts in April 2008. The facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence does not establish mitigation under AG ¶ 20(a). Applicant's SOR-alleged financial problems have been ongoing since 2006. Further, her bankruptcy petition reflects that she continues to spend \$1,861 per month more than she makes.

The evidence establishes partial mitigation under AG ¶ 20(b). Applicant's husband's unemployment in 2005 to 2006, and 2011; and their marital separation in 2006, were beyond her control. However, she did not provide evidence that she acted responsibly under the circumstances with respect to her debt, which is necessary for full mitigation under this condition. She continues to spend substantially more than she makes, despite the discharge of more than \$63,000 of her previous debts through Chapter 7 bankruptcy in 2008 and 2015. Mitigation under AG ¶ 20(b) is not fully applicable.

Applicant has not established a history of "adhering to a good-faith effort" to resolve her delinquent debts. While she twice exercised her ability to legally discharge her debts, she continues to spend much more than she earns. The evidence does not establish mitigation under AG ¶ 20(d).

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(d):

(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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature individual who is accountable for the decisions and choices that led to her financial difficulties. She failed to demonstrate a basis for finding current good judgment, or

permanent behavioral change, concerning her continuing pattern of financial irresponsibility. Her ongoing delinquent debts and excessive spending establish continuing potential for pressure, coercion, or duress.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that she did not meet her burden to mitigate the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant ²
Subparagraphs 1.b through 1.h:	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.

Jennifer Goldstein
Administrative Judge

² SOR ¶ 1.a is found for Applicant to avoid duplicating findings concerning the truck loan in SOR ¶ 1.b.