



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00696

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On May 20, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR and elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on July 11, 2016. Applicant received the FORM on July 16, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence. She provided a four page response to the FORM dated August 9, 2016, plus two reference letters. Her response

and the attached letters have been collectively marked as Applicant's Exhibit A (AE A) and are admitted without objection. The Government's evidence, identified as items 1 through 8, is admitted into evidence without objection. The case was assigned to me on May 1, 2017.

Findings of Fact¹

Applicant is 78 years old. She obtained her Juris Doctorate degree in 1985, and she is admitted to practice law, in good standing, in two states. She was divorced after being married from 1959 to 1988. Applicant has been employed by federal contractors for over 10 years, and by her current employer since November 2006. Applicant reports having no previous security clearance and no military service. Applicant disclosed some of her delinquent debts in section 26 of her March 24, 2014, Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Applicant's only explanation for the delinquent debts alleged in the SOR, was insufficient income, expensive medical bills, and a downturn in the real estate market. Also, her hours were reduced in 2010 by her employer.²

Applicant admitted five of the ten delinquent debts alleged in the SOR, totaling approximately \$51,000. In her Answer to the SOR, Applicant denied SOR ¶¶ 1.e – 1.i, which all appear to derive from medical expenses. She stated "these were paid to Baptist Medical Services and I thought the matter was resolved. That they have not notified the reporting companies is an oversight and I intend to do so."³ Applicant has produced no evidence to show that she paid these delinquent debts, or that she notified the creditors or credit reporting bureaus to remove them. These debts are not resolved.

Applicant's largest delinquent debt, at SOR ¶ 1.b, is a balance of approximately \$40,000 that was charged off post-foreclosure on the mortgage for an investment property that she owned. She was responsible for two investment properties around 2008 when the real estate market collapsed. In her response to the FORM, Applicant stated that she purchased these with the intention of restoring them, and then selling them. This plan did not work out and she started having financial stress around 2010, around the same time that her employer lost important contracts and cut back Applicant's hours. She had to rent out one of these properties, since she couldn't sell it. In 2010, her tenants abandoned that lease-hold, without notice. They left it in such deplorable condition that repair and renovation estimates exceeded \$20,000.⁴

Applicant explained in her response to the FORM that she used credit cards to pay for restoration expenses, medical expenses, and personal expenses during periods

¹ Unless stated otherwise, the source of the information in this section is Applicant's March 24, 2014, Questionnaire for National Security Positions (SF 86) or Security Clearance Application (SCA). (Item 3).

² Item 8, page 3.

³ Item 2, page 2.

⁴ AE A.

of low income. However, in early 2012, she realized that she could not keep up, and she stopped making mortgage payments on that property. She also stopped paying the property taxes.⁵ In December 2012, Applicant defaulted on the mortgage loan. She also tried to negotiate the balances which were overdue on her credit card debts, but the creditors were intractable and demanded payment in the full amount of the debts reflected at SOR ¶¶ 1.b (mortgage), 1.c and 1.d. The creditors obtained judgments in all three cases. These have not been satisfied. Applicant was earning only her social security in the amount of \$895 per month, plus \$658 per month from her Roth retirement account.⁶ She could not pay these creditors as her income was insufficient. These debts have not been resolved.

Applicant admitted to filing for Chapter 7 Bankruptcy protection in 2003, in her Answer to the SOR. She also stated on the last page of her March 2014 SF 86, that she was contemplating filing for bankruptcy protection again. She had her automobile repossessed by the creditor in 2014.⁷ Applicant claims to have had no credit counseling or debt-consolidation services.⁸ Her two reference letters attest to her high moral character, honesty and sound judgment.⁹ She is up to date on all of recent debts since 2014 according to her credit bureau reports. There is no evidence in the record that she has disputed any of the debts alleged in the SOR, or settled them.

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 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 AE A.

⁶ AE A, page 2.

⁷ AE A, page 2.

⁸ Item 8, page 5.

⁹ AE A, attachments.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

The security concern relating to the guideline for financial considerations is set out in AG ¶18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting

classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant admitted to half of the delinquent debts alleged in the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.¹⁰

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 problems were largely beyond the person's control, 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 stated that she paid off the delinquent medical debts, but produced no evidence to show this. She admitted to the three judgments filed against her, including the one filed by her mortgagee at SOR ¶ 1.b, in excess of \$40,000. It resulted from her

¹⁰ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

initial speculative investment in real estate, which didn't pan out due to a downturn in the market. Then, when she had to rent-out one of the properties, her tenants trashed that lease-hold. While these may have been conditions beyond her control, Applicant has not demonstrated that she acted responsibly under the circumstances. Applicant indicated she used credit cards to pay for restoration costs, medical bills, and personal needs during low income periods. Her employer cut her hours, reducing her income. Yet, Applicant did not make adjustments or curb her spending commensurately. She did not obtain debt-consolidation services or credit-counseling, and she failed to pay property taxes for 2011, 2012, and 2013. This resulted in foreclosure on the property in 2014. She produced no budget, or payment plan. Her debts remain unresolved. Her financial problems are recent and ongoing. Applicant provided insufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances unlikely to recur. The mitigating conditions enumerated above do 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 guidelines 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 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.

Applicant's finances remain a security concern. There are ample indications that Applicant's financial problems are not under control. She has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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.j: 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 a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge