



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-01420
)
 Applicant for Security Clearance)

Appearances

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

03/20/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 24, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 5, 2016, and she elected to have the case decided on the written record in lieu of a hearing. On May 27, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on June 1, 2016. She was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file objections

and submit material to refute, extenuate, or mitigate the security concerns. She did not provide any response. The case was assigned to me on February 17, 2017.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-8. FORM Item 6 is an unauthenticated summary of a December 3, 2012 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that she could object to FORM Item 6 and it would not be admitted, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, and she raised no objections.¹ Therefore, I admitted FORM Items 5-8 into evidence as Government Exhibits (GE) 5-8, without objection.²

Findings of Fact

The SOR alleges three student loan accounts, seven medical accounts, three unpaid judgments, and several other delinquent accounts. In her response to the SOR, Applicant admitted all of the alleged debts, except for SOR ¶¶ 1.j., 1.o., 1.r., 1.s., and 1.t. She further claimed that the debts in SOR ¶¶ 1.a., 1.b., 1.c., 1.h., and 1.r. were paid and that the debt in SOR ¶ 1.t. was “cleared” through her husband’s bankruptcy. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 34 years old. After graduating high school in June 2001, she intermittently attended community college and a vocational school between August 2001 and May 2011. After several periods of unemployment, she has been gainfully employed full time since November 2009. Since August 2012, she has been employed full time by a DOD contractor.³

Applicant was married in December 2007. She has two children, ages 13 and 16. In her response to the SOR, she referenced an “estranged husband;” however, she provided no further details about the circumstances or timing of their estrangement.⁴

¹ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant’s waiver of the authentication element must be knowing and intelligent. The Judge’s exclusion of the Report of Interview, containing mitigating evidence, was found to be error following applicant’s appeal.).

² FORM Items 1-4 consist of the SOR, Applicant’s response to the SOR, and related administrative materials. These documents are pleadings and are included in the record.

³ GE 5.

⁴ GE 4; GE 5.

The 20 alleged debts are established in Applicant's September 2012 and January 2015 credit reports, as delineated below:

SOR ¶	Creditor	Balance	Date of Delinquency	Evidence
1.a.	Student loan	\$3,548	2/2012	GE 8
1.b.	Student loan	\$1,442	2/2012	GE 8
1.c.	Student loan	\$942	3/2012	GE 8
1.d.	Utility	\$715	8/2010	GE 7; GE 8
1.e.	Utility	\$588	8/2012	GE 8
1.f.	Cable or Utility	\$502	9/2014	GE 8
1.g.	Credit Card	\$443	11/2009	GE 7; GE 8
1.h.	Utility	\$347	9/2013	GE 8
1.i.	Medical	\$316	3/2008	GE 8
1.j.	Cable or Utility	\$255	8/2013	GE 8
1.k.	Medical	\$189	7/2009	GE 7; GE 8
1.l.	Medical	\$174	12/2011	GE 7; GE 8
1.m.	Medical	\$141	2/2012	GE 8
1.n.	Medical	\$115	7/2012	GE 8
1.o.	Cable or Utility	\$103	8/2013	GE 8
1.p.	Medical	\$100	2/2012	GE 7; GE 8
1.q.	Medical	\$25	6/2013	GE 8
1.r.	Judgment	\$660	9/2010	GE 7; GE 8
1.s.	Judgment	\$266	8/2011	GE 7
1.t.	Judgment	\$12,670	5/2006	GE 7

During her December 2012 security interview, Applicant attributed her financial delinquencies to her husband's two recent employment layoffs and her poor recordkeeping. She expressed an intent to contact these creditors and resolve her delinquent debts. In her response to the SOR, she claimed to have made payments on the debts alleged in SOR ¶¶ 1.a., 1.b., 1.c., 1.h., and 1.r.; however, she provided no corroborating evidence. She further claimed that the judgment alleged in SOR ¶ 1.t. was resolved through her husband's bankruptcy; however, she provided no documentation.⁵

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 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

⁵ GE 5; GE 6.

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.”

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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* EO 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:

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. The following are potentially applicable in this case:

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

The 20 alleged debts, which became delinquent between 2006 and 2014, total approximately \$23,543. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government established a case for disqualification, thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁶ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.⁷ Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 financial problems are ongoing, and there is no evidence that she has taken any steps to resolve or repay the 20 alleged debts. As a result, doubts remain as to her good judgment and financial responsibility. Thus, AG ¶ 20(a) is not applicable.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond her control and that (2) Applicant

⁶ Directive ¶ E3.1.15.

⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

acted responsibly under the circumstances.⁸ Applicant has been gainfully employed since November 2009; however, she had prior periods of unemployment and her husband had unspecified periods of unemployment. Although she referred to her husband as “estranged,” she has provided no further information as to the timing and circumstances of her marital separation. Nonetheless, because the periods of unemployment may have hindered Applicant’s ability to address her delinquent debts, they may constitute circumstances beyond one’s control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances. Here, Applicant provided no evidence of any payments, a plan to resolve her delinquent debts, or of any steps taken in furtherance of a debt resolution plan. Therefore, AG ¶ 20(b) does not apply.

There is no record evidence of credit counseling or record a monthly budget to conclude that there are clear indications that Applicant’s financial problems are under control. Rather, the absence of evidence of payments or other steps to resolve the alleged delinquent debts undercuts such a conclusion. Therefore, AG ¶ 20(c) does not apply.

Although she claimed to have paid the debts alleged in SOR ¶¶ 1.a., 1.b., 1.c., 1.h., and 1.r., Applicant provided no documentation of any payments made or steps taken to resolve any of her delinquent debts. Therefore, AG ¶ 20(d) does not apply.

In her response to the SOR, Applicant denied the debts alleged in SOR ¶¶ 1.j., 1.o., 1.r., 1.s., and 1.t. As to SOR ¶¶ 1.j. and 1.o., she indicated that she needed to conduct further research; however, she never substantiated her dispute. Likewise, she provided no documentation to substantiate legitimate disputes as to SOR ¶¶ 1.r. and 1.s. Applicant’s claim that the debt in SOR ¶ 1.t. was resolved through her estranged husband’s bankruptcy is without merit. She provided no documentation to show that this judgment was included in her husband’s bankruptcy petition. More importantly, the discharge of her husband’s bankruptcy debts does not necessarily discharge Applicant’s liability on the judgment. Applicant has not provided documentary evidence to demonstrate that she is not liable for the alleged debts. Thus, AG ¶ 20(e) does not apply. Absent evidence of debt repayment and financial responsibility, I find that financial considerations concerns remain.

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

⁸ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

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 and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant was provided an opportunity in her SOR response and in response to the Government's FORM to show what steps she has taken to resolve these delinquencies, and to provide documentation. She presented limited information about the circumstances that have hindered her ability to address her debts given her full-time employment since November 2009. She has presented no evidence to show steps taken to repay or resolve her debts or that she can maintain her current monthly financial obligations. As a result, the totality of the record evidence leaves me with doubts as to Applicant's suitability for a security clearance. I conclude Applicant did not mitigate 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.

Eric H. Borgstrom
Administrative Judge