



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



In the matter of:

)
)
) ISCR Case No. 15-01856
)
)
)

Applicant for Security Clearance

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

09/27/2016

Decision

WHITE, David M., Administrative Judge:

Applicant incurred more than \$20,000 in delinquent mortgage, car loan, and consumer debts from 2009 to present, despite continuous employment in her current position. She demonstrated neither sufficient explanation for these debts, nor changes to avoid recurring financial problems. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on October 23, 2012.¹ On September 18, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken

¹Item 3.

²Item 1.

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on October 29, 2015, and requested that her case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on January 15, 2016. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on February 3, 2016, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant submitted no additional material in response to the FORM during the time provided, did not object to its consideration, and did not request additional time to respond. I received the case assignment on August 22, 2016.

Findings of Fact

Applicant is 44 years old. She has worked for a defense contractor as a business operations specialist since June 2005, before which she was employed for ten years as an executive assistant to the manager of a major-chain hotel. She earned a high school diploma in 1991. She has never served in the military or held a security clearance. She has been married since 1998, and has two teenage children.⁵

In her response to the SOR, Applicant admitted all four SOR allegations concerning her delinquent debts, without further explanation. Her admissions are incorporated in the following findings.⁶

SOR ¶ 1.a alleged that Applicant was delinquent in the amount of \$11,915 on her home mortgage loan, which had an outstanding balance of \$405,291. These figures were based on her credit report dated February 3, 2015, which showed her last payment to have been in August 2014, and a monthly payment amount of \$2,383.⁷ Her November 10, 2012 credit report showed her to be delinquent in the amount of \$20,246 on this loan, on which foreclosure proceedings had been initiated with an outstanding balance of \$400,176.⁸ Applicant disclosed her mortgage delinquency in Section 26 of

³Item 2.

⁴Department Counsel submitted five Items in support of the SOR allegations.

⁵Item 3.

⁶Item 2.

⁷Item 4 at 1.

⁸Item 5 at 6.

her 2012 SF-86, and said that she was going through the lender's Loan Assistance Program to seek a loan modification. She also said that the reason for this financial issue was the death of a co-borrower, without further elaboration as to the identity or loan involvement of that person.⁹ Applicant provided no subsequent information concerning the status of this debt, other than to admit the SOR allegation in Item 2.

SOR ¶ 1.b alleged Applicant's delinquent \$7,583 debt for an auto loan that she opened in May 2006, and which was placed for collection after she stopped making payments in late 2009. Other than admitting the debt, Applicant provided no further information about it.¹⁰

SOR ¶¶ 1.c and 1.d alleged a charged-off \$701 credit card debt that became delinquent in 2009, and a \$94 telecommunications debt that was placed for collection in 2012. Applicant admitted the truth of these allegations without further explanation.¹¹

Applicant provided no evidence establishing her current income or household budget. She offered no evidence of financial counseling, of savings or retirement investments, or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility her duties entail, or her track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person 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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied 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) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

⁹Item 3 at 27-28. The only deceased relatives that Applicant reported in this SF-86 were her parents-in-law. Item 3 at 15-21.

¹⁰Item 4 at 2; Item 5 at 6.

¹¹Item 2; Item 4 at 2; Item 5 at 5.

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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

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

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant accrued more than \$20,000 in delinquent debt, starting in 2009. These delinquencies arose despite her continuous employment during that time, and she offered no evidence of ability or willingness to resolve them. Her pattern and history of financial irresponsibility raise security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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, 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 stated that her mortgage problems arose due to the death of a co-borrower, but provided neither details nor corroboration to establish who that was or how the death affected her ability to pay the mortgage debt. She provided no evidence of recent payments toward, or an effective plan to resolve, her delinquent debts that exceed \$20,000. She did not demonstrate that delinquent indebtedness is unlikely to recur, that the debts arose from unexpected conditions, or that her financial situation is under control. Department Counsel pointed out the absence of such updated information in the FORM. Applicant chose not to address those concerns by filing additional information in response thereto. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions.

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 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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult. She provided no reason that she should not be considered responsible for the choices and conduct that caused the financial problems set forth in the SOR. Her delinquent debts arose over the past seven years and she enjoyed continuous employment in her current position throughout that period.

Applicant offered no evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of her life that could mitigate resulting security concerns. The potential for pressure, coercion, and duress from her financial situation remains undiminished, and the likelihood of continuation or recurrence is substantial.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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.

DAVID M. WHITE
Administrative Judge