



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 15-03336

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel

For Applicant: *Pro se*

03/31/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to provide evidence that she resolved any of her delinquent debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On November 6, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on February 2, 2016, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.)

On May 6, 2016, Department Counsel prepared the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant the same day. She received it on May 12, 2016. The FORM notified her that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She did not submit any additional information or file objections to the Government's Items; hence, Items 2 through 6 are admitted into evidence. DOHA assigned the case to me on March 6, 2017.

Findings of Fact

Applicant admitted the four allegations contained in the SOR. (Item 2.) Her admissions are incorporated into these findings of fact.

Applicant is 52 years old and divorced three times. She has five children: three adult children, a 16-year-old, and a 3-year-old. She is a high school graduate. She has worked for a defense contractor since May 2014. In June 2014, she completed a security clearance application (SCA). (Item 3.)

Applicant has a history of delinquent debts that she attributed to: (1) her divorce in August 2010, after which her income dropped; and (2) periods of unemployment from: March 2003 to November 2006; August 2010 to March 2011; April to May 2011; July to August 2011; November 2011 to January 2012; and August 2013 to May 2014. She received unemployment benefits during those periods. (Items 2, 4.)

Based on credit bureau reports (CBRs) from June 2014 and March 2015, the SOR alleged four delinquent debts, totaling \$11,530, including a May 2012 judgment for \$1,759. These debts were reported to the credit bureaus between 2010 and 2014. In addition to admitting that they were her debts, Applicant stated that her former husband was responsible for half of the debt in SOR ¶ 1.c. (Items 2, 5, 6.) Applicant did not submit documentation to show that any of the alleged debts are paid, resolved, being resolved, or formally disputed. All of them remain unresolved.

Applicant did not provide evidence that she obtained credit or financial counseling, or sought other assistance to resolve her delinquent debts. She did not offer a budget or a plan to address the delinquent debts.

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 (AG) 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, 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 (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.

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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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 relating to 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.

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.¹

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

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

Applicant has a history of being unable or unwilling to meet her financial obligations, which began in 2010 and continues to date. The evidence raises security concerns under the above two disqualifying conditions, and shifts 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

¹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant failed to produce evidence that she addressed any of alleged delinquent accounts or that similar problems are unlikely to recur. She provided some evidence that the delinquencies were caused by her 2010 divorce and periods of unemployment. Those were circumstances beyond her control; however, she did not provide evidence that she acted responsibly under those circumstances. She presented no evidence of financial counseling or a budget. There are no clear indications that her financial problems are being resolved in good faith, or are under control. She did not present documentation that she formally disputed any of the SOR-listed debts, or that a legitimate basis exists for her to do so. Accordingly, the record is insufficient to establish mitigation under any of the above 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.

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 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 adult, who is responsible for her financial obligations. After submitting Item 2, she received the Government's FORM, which notified her that she failed to provide documentation that she resolved or was resolving any debt and indicated that she had 30 days to submit proof of the debts' status. Applicant did not submit any information. Overall, the record evidence leaves me with doubt as to Applicant's judgment, reliability, and present eligibility and suitability for a security clearance. She did not meet her burden to mitigate the security concerns arising from 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**

Subparagraphs 1.a through 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.

SHARI DAM
Administrative Judge