



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-03568

Appearances

For Government: Carroll J. Connelley, Esq. Department Counsel
For Applicant: *Pro se*

09/07/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

On December 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.¹

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on February 15, 2017.² A notice of hearing was issued on March 28, scheduling the hearing for August 17, 2017. Government Exhibits (GX) 1-7 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-B which were admitted into the record. I kept the record open until August 31, 2017 so that Applicant could submit additional documentation. However, she did not submit any additional documents. The transcript was received on August 25, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a-1.y. She also admitted SOR ¶¶ 2.a-2.b. She also provided an explanation with her responses.

Applicant is a 48-year-old associate analyst for a defense contractor. She divorced twice, but remarried in 2011. She has two adult children and two adult stepchildren. She graduated from high school and attended several post-secondary programs, but has not obtained a degree. She has been with her current employer since 2014. She completed her security clearance application (SCA) in March 2014. (GX 1)

Financial Considerations

The SOR alleges that Applicant has 25 delinquent debts, which total approximately \$21,000.³ The delinquent debts include a 2008 judgment, five medical accounts, collection accounts, and student loans. (GX 3, 4, 5, and 7)

Applicant was unemployed in 2005 until 2008. She accepted low-paying, part-time jobs. She was unemployed from December 2009 to November 2011. Her second husband lost his job as a result of a market downturn. (Tr. 22) Her financial problems began in 2008, when she divorced. Her second marriage ended in divorce as well, and the agreement was that he would pay for medical insurance for Applicant and the children. However, he did not keep his promise. She incurred medical debt and stated that she paid some accounts, but was in the process of trying to pay the remaining ones. Applicant disclosed various collection accounts in her SCA and noted that they were resolved or in a payment plan. (GX 1) In her answer to the SOR, she stated that the debts occurred before and during divorces. She stated that she has no new debt and had paid some accounts. (AX B)

²The case was originally scheduled for June 16, 2017, but Applicant requested a continuance, which was granted.

³Applicant acknowledged that in 2007, a chapter 13 bankruptcy was discharged in the amount of \$43,000.

In her 2014 investigative interview, Applicant did not dispute any of the delinquent debt. She noted that she intended to pay each account and that the medical accounts were resolved. (GX 2) She noted that she received unemployment benefits, but the amount was not sufficient to pay household bills and delinquent debts. She noted repayment plans for other debts in the SOR.

As to the medical collection accounts : SOR ¶¶ 1.b, c, g, l, t, v, and y, ranging in time from 2014 to 2015, are the result of Applicant's second husband not honoring his agreement to cover her and the children under his health plan. (Tr. 23) She stated that she did not have the money to pay the bills at the time, and she did not have health insurance. The medical bills were not a priority for her. At the hearing, Applicant stated that all had been paid and that she would submit documentation. (Tr.28) She noted that SOR ¶¶ 1.n -1.x were also medical collection accounts. (Tr. 28) Again, she stated that she had documentation to prove that they were resolved, but did not submit anything for the record.

As to SOR ¶ 1.a, a collection account in the amount of \$2,308, this is the result of rent that was not paid. She was evicted and believes that the time frame was 2010 or 2011. She stated that she reached out to them when she completed her security clearance application, but they refused to work with her. (Tr.30) She stated that she would provide a phone log, but did not submit documentation.

As to SOR ¶ 1.d, a cable collection account in the amount of \$177, Applicant stated that she paid the amount and would provide documentation. As to SOR ¶ 1.e, a utility collection account in the amount of \$478, she stated that it was paid and would provide documentation. (Tr. 33) As to 1.i, a phone account in the amount of \$1,341, Applicant stated that it was paid. She did not submit any documentation. As to SOR ¶ 1.h and 1.k, for student loans, Applicant stated that they were resolved for \$2,801. (Tr. 35) As to the 2008 judgment in the amount of \$2,305, Applicant did not know the status of the judgment.

Applicant's most recent credit bureau shows that she has about \$60,000 in student loans that are in deferment status. (GX 7) She had been paying on the student loans but stopped paying for about four months so that she could help a family member. (Tr. 38) She stated that she is now paying about \$350.

Applicant's current monthly net income is \$2,408. She is currently married and her spouse earns about \$4,400 as net monthly income. (Tr. 42) She has a home in one state that she rents. She has a car loan. She has about \$6,000 in savings, and she has a retirement account. (Tr.46)

Applicant has not obtained formal credit counseling. She has health insurance. I left the record open so that Applicant could provide some documentation as to what she is doing about her delinquent debts and to confirm the accounts that she noted were paid. Applicant did not provide any financial documentation for the record to confirm payments or payment plans.

Applicant submitted seven letters of recommendation from program managers, colleagues and friends. Each letter attests to the fact that Applicant is honest, reliable and a valuable asset to her team. (AX A) She is organized, a role model to others, and is an upstanding citizen. It did not appear that any of the character references were aware of the security issues at hand in this case.

Criminal Conduct

SOR ¶ 2.a also alleged that in May 2010, Applicant was charged with identity theft (felony) and theft (misdemeanor). She pled guilty to identity theft and theft-2nd degree. She was sentenced to 18 months of probation and 200 hours of community service. (GX 6)

SOR 2.b alleged that in January 2001, Applicant was charged with three counts of forgery (felony) and three counts of theft (felony). The charges were dismissed.

Applicant had different reasons for the events. She reported in her investigative interview that the 2001 incident was a bounced check. (Tr. 48) At the hearing, she described an event where she was at work and decided to just “play with the checks.” She wrote various names on the company checks and then put them in a folder. She stated that she did not issue any checks to herself or try to cash any checks. She added, “she was young and stupid”. (Tr. 48-50) She stated that she was naive and hired an attorney and the charges were dismissed. (GX 6) She stated that she could have had the incident expunged, but she chose not to.

As to the May 2010 incident, Applicant explained that she went to a kitchen drawer in the house where she was living with her sister-in-law and brother. She reached in and pulled out a check and paid a bill. She later learned that she pulled out the wrong checkbook. Her sister-in-law called the police, even though Applicant explained it was an innocent mistake and would give her the \$200. However, her brother insisted that Applicant be charged. (Tr. 53) She stated that it was more of a family discord and her brother refused to let it go. Applicant pled guilty and served 18 months probation and completed her community service. (Tr. 55) There are no other criminal incidences in history.

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”⁴ The burden of proof is something less than a preponderance of evidence.⁵ The ultimate burden of persuasion is on the applicant.⁶

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁷ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁸ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁹ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁹ *Id.*

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

The Government produced credible evidence to establish the delinquent debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(b).

AG ¶ 20 provides conditions that could mitigate the security concerns:

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

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service; and there are clear indications that the problem is being resolved or is under control;

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

(g) the individual has made arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has encountered many challenges and events beyond her control due to divorces and unemployment. However, she has ongoing financial problems and has not presented any evidence that she is resolving any of her delinquent debts. She has not had formal financial counseling; nor did she present documentation that she has a clear plan to resolve her debts. She admits that she does not have sufficient income to do so. AG ¶ 20 (a), (b), (c), and (d) do not apply. She has not met her burden to alleviate the security concerns under the financial considerations guideline.

Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30.

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes conditions that could raise security concerns under AG ¶ 31. The disqualifying conditions potentially applicable in this case include:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence, (including, but not limited to, a credible allegation, an admission, and matters of criminal record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant admitted the two allegations under the criminal conduct guideline. She explained what occurred in the 2010 incident and has not had any other occurrences. The 2001 incident appeared to be the result of a mistake, but due to a family issue. Applicant pled guilty, served 18 months probation, and completed 200 hours of community service.

AG ¶ 32 provides conditions that could mitigate security concerns. The following is potentially applicable:

(d) there is evidence of successful rehabilitation, including, but not limited to, the passage of time without recurrence of criminal activity restitution, compliance with the terms of probation, job training or higher education, good employment record, or constructive community involvement.

This mitigating condition applies because of the passage of time, completion of probation, Applicant's work record and letters of recommendation, her community service, and her post-secondary education.

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 an applicant's conduct and all the 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 48 years old. She is working diligently to provide for her family. She is recommended for her good work. She had challenging circumstances with divorce and unemployment. She has not provided any evidence that she has rectified her financial situation in any way. She did not submit documentation that she has a plan to remedy her financial situation. She stated that she paid or is resolving all the debts, but she has not submitted any evidence to support her assertions.

After weighing the disqualifying and mitigating conditions under Guidelines F and J, and evaluating all the record evidence in the context of the whole person, I conclude that she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

As to the security concern under the criminal conduct guideline, Applicant has mitigated the concern through the passage of time and good work record. She has no other incidents in her criminal history.

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.y:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge