



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 15-03931

Appearances

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

October 16, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant incurred more than \$211,000 in delinquent student loan debts, which she has not repaid or otherwise resolved. Applicant did not show that her financial difficulties are under control. 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 July 3, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 2.) On March 25, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on April 26, 2016, and requested that her case be decided by an administrative judge on the written record without a hearing (Answer). (Item 1.) On July 8, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items,¹ was mailed to Applicant on July 8, 2016, and received by her on July 19, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded. Items 1, 2, 4, and 5 are admitted into the record.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions² issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility, and eligibility to hold a security clearance. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

Findings of Fact

Applicant is 34 years old and married. She received a bachelor's degree in 2008. She has worked for a federal contractor since 2013. (Item 2.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

¹ Department Counsel submitted five Items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on July 22, 2013. Applicant did not adopt the summary as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, Report of Investigation summaries are inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

² SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

In her Answer, Applicant admitted all the allegations in the SOR, with explanations.³ Those admissions are findings of fact. Applicant admitted that she owes approximately \$211,874 in past-due student loans. The existence and amounts of the debts are supported by credit reports from 2013 and 2015. (Items 4 and 5.) The current status of the student loans is as follows:

SOR allegations 1.a through 1.e. These five debts are owed to a private company for past-due student loans. The total amount owed for them is \$174,549. The last action on these debts appears to have been in 2011. In her Answer Applicant states, “My husband and I have plans to settle all private student loans in the coming years with a home equity line of credit.” No further information was provided. These debts are not resolved.

SOR allegations 1.f through 1.k. These five debts are federally-insured student loan debts in the total amount of \$37,325. Applicant states in her Answer that she has been able to consolidate these student loans, stating, “I am currently in good standing and all set to make future payments on time.” However, Applicant submitted no documentation supporting this statement. Applicant did not prove that these debts are being resolved.

According to Applicant, her financial difficulties were due to her attending a for-profit college, where she received a bachelor’s degree in 2008. She states in her Answer:

I allowed them [the school] to fill out my financial aid paperwork for me, all I had to do was get my dream job after school and pay it back, falling victim to predatory lending. I continuously have to repair the damage I have done to my life, my credit, and my name as well as the lives of my family. While getting these loans approved was easy, I was misinformed and ill-prepared as to the gravity of educational loans and how to satisfy them.

Applicant did not submit any documentation concerning predatory lending practices at the school she attended. She did not submit any documentation showing that she has participated in credit counseling or budget education. Applicant provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

³ The SOR contains two allegations styled “1.j”. Applicant specifically admitted each of the two 1.j allegations. The second allegation is hereby designated “1.k,” and the SOR in my file has been amended accordingly.

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 national security eligibility.

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. 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, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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." See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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 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 personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

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

Applicant has been continuously employed by a federal contractor since 2013. She has a substantial amount of past-due student loan debts that she has not yet resolved. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial 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; and

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

Applicant continues to owe past-due student loan debt in the amount of at least \$211,870. While she claimed without support that she has consolidated about \$37,000 of debt, she admitted being unable to resolve approximately \$174,000 of debt as of the date of her Answer. She offered no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that her problems were due to predatory lending practices by the college she attended. However, Applicant provided no documentation to support that averment. In addition, Applicant did not submit any documentation showing that she acted responsibly over the last few years. Mitigation is not established under AG ¶ 20(b).

No evidence of financial counseling from a legitimate and credible source or budget information establishing solvency going forward was provided. Further, the record does not show clear indications that Applicant's financial problems are under control. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Applicant failed to show that any of the mitigating conditions apply to her case. Guideline F is found against Applicant.

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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the applicable 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 continues to owe over \$211,000 in past-due student loan debt, and did not show any plan for resolving that substantial indebtedness or otherwise supporting a finding of national security eligibility. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She failed to meet her burden to mitigate the security concerns arising under the guideline for 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.k:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross
Administrative Judge