



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



In the matter of:)
)
) ISCR Case No. 15-04658
)
)
Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

July 18, 2017

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns raised under the guideline for financial considerations, which include an unresolved mortgage deficiency and unpaid student loans. National security eligibility for access to classified information is denied.

History of the Case

On October 2, 2014, Applicant submitted a security clearance application (SCA). On February 26, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued to Applicant a Statement of Reasons (SOR), alleging 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 previous

Adjudicative Guidelines (AG) effective on September 1, 2006. This decision applies the new AG that became effective on June 8, 2017.¹

Applicant answered the SOR in writing on March 14, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on July 15, 2016, and re-assigned it to me on September 29, 2016. DOHA issued a Notice of Hearing on December 21, 2016, scheduling the hearing for January 18, 2017. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified, called one witness, and offered Applicant Exhibits (AE) 1 through 4 into evidence. All exhibits were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on January 26, 2017. The record remained open until February 13, 2017, to give Applicant an opportunity to provide additional exhibits. Applicant timely submitted four exhibits, which I marked as AE 5, AE 6, AE 7 and AE 8, and admitted into evidence without objections from Department Counsel.

Procedural Ruling

At the commencement of the hearing, Department Counsel moved to strike the allegation in SOR ¶ 1.j in its entirety. Applicant had no objection and the allegation is stricken. (Tr. 8-9)

Findings of Fact

Applicant admitted all allegations in the SOR with explanations. Her admissions are incorporated into these findings.

Applicant is 39 years old and divorced since 2004, after four year of marriage to her husband. She has a 17-year-old son from that marriage. Applicant earned a bachelor's degree in 2010 and a master's degree in 2013. (Tr. 25.) She worked for federal contractors from June 2007 to March 2013, at which time she was laid off from a position that paid \$89,000 annually. She then worked at low paying jobs until 2014. (Tr. 34-36.) In January 2015, she was laid off for several months after she had surgery. (Tr. 27.) She then worked full-time for an employer for some months and subsequently in a part-time position. Since November 2016, she has worked for her current employer. (Tr. 35.) She has held security clearances during most of her employment years. (Tr. 27, 31; GE 6; Answer.)

Applicant's financial problems began after her divorce. She became responsible for certain joint marital debts. She did not have enough money to pay the mortgage on the house she purchased in 2007 for \$176,000, and her living expenses, after moving to another state for employment. Subsequently, she also experienced periods of

¹I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. Although this decision is issued pursuant to the new AG, my decision would be the same under either set of guidelines.

unemployment and underemployment, during which time she used her savings of \$14,000 to pay bills. She eventually extinguished those savings and her unemployment benefits. (Tr. 32-33, 38; Answer.)

Based on credit bureau reports (CBR) from October 2014, April 2015, and January 2017, the amended SOR alleged 11 debts, which became delinquent between 2011 and 2015, and totaled over \$45,000. It also alleged a 2005 Chapter 7 bankruptcy. (GE 2, GE 3, GE 4.) The status of each allegation is as follows:

1. (SOR ¶ 1.a) The \$37,763 past-due balance relates to Applicant's previous mortgage on the house she purchased. When she moved to a new state in 2009, she attempted to sell it, but was unsuccessful. She was unable to pay the mortgage on that property and maintain living expenses in the state where she moved. In 2012, the mortgagor foreclosed on the loan. She said she received a statement from the mortgagor after the foreclosure stating that she had a zero balance. She was unaware of the alleged deficiency until this investigation began. She agreed to contact the bank and obtain documentation of the zero balance. (Tr. 42-44.) She did not submit any information post-hearing related to the foreclosure. This debt is unresolved.

2. (SOR ¶ 1.b) Applicant said the delinquent student loan, which has a \$1,295 payment due, is deferred. She agreed to provide proof of its deferment. On February 7, 2017, she submitted her application to the federal education loan program for the consolidation of her loans and a payment plan. There is no evidence she received approval for her application, that the loans are to be consolidated, or any suggested repayment amount. (Tr. 47; AE 7.) This debt is unresolved.

3. (SOR ¶ 1.c) The \$2,695 retail debt was charged off. Applicant has been making payments on the debt and the balance is \$1,697. (Tr. 47-49; AE 2, AE 8.) This debt is being resolved.

4. (SOR ¶ 1.d) Applicant settled the \$1,173 credit card debt for \$554. She paid it. (Tr. 49-50; AE 2, AE 4.) This debt is resolved.

5. (SOR ¶ 1.e) The \$776 debt is owed for a delinquent student loan that became delinquent in 2014. (Tr. 56-57.) It is unresolved.

6. (SOR ¶ 1.f) The \$598 debt is owed for a delinquent student loan that became delinquent in 2014. (Tr. 56-57.) It is unresolved.

7. (SOR ¶ 1.g) The \$440 debt is owed to a credit card company. She made two payments to the company that paid off the debt. (Tr. 51-53; AE 2, AE 3.) It is resolved.

8. (SOR ¶ 1.h) The \$113 medical debt is an unpaid medical bill from 2013. (Tr. 44, 55, 63.) It is unresolved.

9. (SOR ¶ 1.i) Applicant was unfamiliar with the \$182 credit card debt. (Tr. 53-54.) It is unresolved.

10. (SOR ¶ 1.j) This allegation was stricken.

11. (SOR ¶ 1.k) The \$152 debt is owed for a student loan that became delinquent in 2014. Applicant said the loan is in a deferred status, but did not provide proof. (Tr. 56-58.) It is unresolved.

12. (SOR ¶ 1.l) The \$135 debt is owed for a student loan that became delinquent in 2014. Applicant said the loan is in a deferred status, but did not provide proof. (Tr. 56-58.) It is unresolved.

13. (SOR ¶ 1.m) In May 2005 Applicant filed Chapter 7 bankruptcy after her divorce. At the time she had assets of \$18,000 and liabilities of \$64,000, which included unpaid student loans. In August 2005, the court entered a discharge order for \$18,000 of debts. (Tr. 69; GE 5.)

Applicant has borrowed about \$70,000 for student loans. She made payments on them until she was laid off in 2013. (Tr. 59, 68.) According to the January 2017 CBR, two more retail accounts were reported as delinquent. They total about \$2,800. (Tr. 54-55; GE 4.) Since gaining full-time employment several months ago, she is earning about \$50,000. She has not participated in credit or financial counseling. (Tr. 66.) She does not use credit cards. (Tr. 70.) She did not submit a written budget. She is trying to resolve the high-interest debts before focusing on other debts. (Tr. 72.)

A witness testified on behalf of Applicant. She has known Applicant for about 10 to 12 years. She is familiar with Applicant's financial difficulties and her year of unemployment from 2013 to 2014. The witness loaned Applicant \$1,000 to help her pay expenses. During that time, she did not observe Applicant engaging in frivolous spending. She said Applicant responsibly repaid the loan in installments. (Tr. 16-23.)

Applicant submitted a letter of recommendation from her former husband. He said she is responsible, honest, and dedicated to her work. (AE 5.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 who applies for national security eligibility 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Finally, as emphasized in Section 7 of Executive Order 10865, “[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.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

AG ¶ 18 sets out the security concerns 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 overextended is at 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.²

AG ¶ 19 describes three conditions that could raise a security concern and be disqualifying in this case:

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

Applicant has a history of being unable or unwilling to satisfy delinquent debts that began accumulating in 2013 and continue to be delinquent today. Some remain unresolved. The evidence raised the above disqualifying conditions.

AG ¶ 20 provides four conditions that could mitigate the security concerns raised under this guideline:

- (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, 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.

Some of Applicant's financial problems have been ongoing since 2013. The evidence does not establish mitigation under AG ¶ 20(a). There is evidence to establish partial mitigation under AG ¶ 20(b). Many of Applicant's financial problems resulted from a long period of unemployment, periods of underemployment, and as the consequence of a divorce in 2004. Those were circumstances beyond her control. She provided some evidence that she acted responsibly under the circumstances in that she exhausted her

² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

savings trying to pay bills while she was unemployed. The evidence does not establish mitigation under AG ¶ 20(c) because she has not participated in credit counseling or provided a budget from which to determine that her financial problems are under control.

Applicant made good-faith efforts to pay and resolve the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.g, which established mitigation under AG ¶ 20(d) for them. She did not provide evidence that the largest debt, a \$37,763 mortgage deficiency, is resolved or being resolved. Although she said three student loans are deferred, she did not submit verification of that assertion.

Whole-Person Concept

The whole-person concept requires the administrative judge to evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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 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 relevant facts and circumstances surrounding this case. Applicant is a 39-year-old educated and intelligent woman. Her divorce in 2004 and subsequent periods of unemployment and underemployment negatively affected her ability to manage financial obligations. Although she has resolved some delinquent debts, she did not provide credible evidence that she does not have an outstanding mortgage debt or that her students loans are in a deferred status at this time. She applied for a hardship deferment after the hearing for the delinquent student loans.

After weighing the disqualifying and mitigating conditions, and all relevant facts and circumstances in the context of the whole-person, Applicant did not mitigate the financial considerations security concerns. Overall, the record evidence leaves some doubt as to Applicant's present national security eligibility.

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 and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h and 1.i:	Against Applicant
Subparagraph 1.j:	Stricken
Subparagraphs 1.k through 1.m:	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 access to classified information. National security eligibility is denied.

Shari Dam
Administrative Judge