



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



In the matter of:)
)
) ISCR Case No. 15-05329
)
Applicant for Security Clearance)

Appearances

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

06/26/2017

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns raised under the guideline for financial considerations. National security eligibility for access to classified information is denied.

History of the Case

On December 8, 2014, Applicant submitted a security clearance application (SCA). On June 13, 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 Adjudicative Guidelines (AG) effective on September 1, 2006. This decision applies the New AGs that came into effect on June 8, 2017.¹

Applicant answered the SOR in writing on July 18, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals

¹ I considered the AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case were considered under the previous AGs.

(DOHA) assigned the case to me on September 28, 2016. It 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 4 into evidence. Applicant testified, called one witness, and offered Applicant Exhibits (AE) 1 through 6 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 15, 2017, to give Applicant an opportunity to provide additional exhibits. Applicant timely submitted AE 7. Department Counsel had no objection to the exhibit and it is admitted into evidence.

Findings of Fact

Applicant admitted 12 allegations in the SOR and denied the allegations listed in SOR, ¶¶ 1.b, 1.e, 1.i, 1.l, and 1.m, with explanations. Her admissions are incorporated into these findings.

Applicant is 36 years old and divorced since December 2015 after 12 years of marriage to her third husband. They separated in 2012. She has two children, ages 11 and 19. She has one college class to complete and will then earn an associate's degree. She worked for the employer sponsoring her for a security clearance from August 2014 until December 2016, when she was laid off pending the outcome of this case. She was self-employed in a retail business from 2010 into 2014, when she closed it because it did not earn a profit. Her husband was also a co-owner of that business, which she started when he deployed on military orders. She worked for another federal contractor from 2005 to 2010. She has also worked as a tax preparer. (Tr. 19-21, 30, 51; GE 1.)

Applicant attributed her financial problems to the separation from her husband in 2012, and subsequent divorce and division of marital property in 2015. After separating, she was unable to manage her expenses without her husband's salary, and moved into her mother's house. (Tr. 22-23, 33.) She is trying to have the marital settlement agreement modified because it did not adequately address joint debts and other issues. According to the agreement, her husband assumed their house-related debts, and she assumed the business-related debts. (Tr. 26, 29-30, 35; AE 4.)

In March 2015, a government investigator interviewed Applicant about her financial situation and inquired about the status of 21 delinquent debts. Applicant said she was waiting for her divorce to be finalized in order to determine which debts she would be responsible for paying. (GE 4.)

Based on credit bureau reports (CBR) from January 2015 and May 2016, the SOR alleged 17 delinquent debts, which became delinquent between 2011 and 2015, and totaled over \$44,000. (GE 2, GE 3; AE 1.) The status of each debt is as follows:

1. (SOR ¶ 1.a) This \$8,300 debt is owed to credit card company. Applicant used the card for expenses related to her closed business. It is reported as an individual account in her name. (Tr. 41-44.) This debt is unresolved.

2. (SOR ¶ 1.b) Applicant denies owing the \$1,663² debt for a boat she and her husband purchased. She asserted it is her former husband's responsibility, although it was not listed in their property settlement. (Tr. 34, 36; AE 4.) It is reported as a joint account. She thought he sold the boat. (Tr. 38.) This debt is unresolved.

3. (SOR ¶ 1.c) This \$1,065 debt is owed to a credit card company. Applicant used this card for expenses related to her closed business. It is reported as an individual account. (Tr. 42-44.) This debt is unresolved.

4. (SOR ¶ 1.d) This \$4,255 debt is owed to a credit card company. Applicant used this card for expenses related to her closed business. It is reported as an individual account. (Tr. 42-44.) This debt is unresolved.

5. (SOR ¶ 1.e) Applicant denied owing this \$260 debt on the basis that it is her former husband's responsibility, although it was not listed in their property settlement. (Tr. 37.) It is reported as a joint account. (Tr. 40.) It is unresolved.

6. (SOR ¶ 1.f) This \$565 debt is owed to a cell phone company. It is reported as an individual account. (Tr. 41-44.) It is unresolved.

7. (SOR ¶ 1.g) This \$579 debt is an unpaid medical bill from 2013. It is reported as an individual account. Applicant admitted it is her bill. (Tr. 41-44, 55.) It is unresolved.

8. (SOR ¶ 1.h) This \$658 medical debt is an unpaid medical bill from 2013. It is reported as an individual account. She admitted it is her bill. (Tr. 41-44, 55.) It is unresolved.

9. (SOR ¶ 1.i) Applicant denied owing the \$246³ debt for cable service, on the basis that it is her former husband's responsibility because he remained in their house after she left the residence. It was not listed in their property settlement. (Tr. 37.) It is reported as an individual account in her name. (Tr. 38, 40.) It is unresolved.

10. (SOR ¶ 1.j) This \$4,176 judgment was entered against Applicant, individually, in September 2013. (Tr. 41-44.) It remains unresolved.

11. (SOR ¶ 1.k) This \$3,138 judgment was entered against Applicant, individually, in September 2013. (Tr. 41-44.) It remains unresolved.

12. (SOR ¶ 1.l) Applicant denied this \$4,217⁴ debt for a vehicle repossession. She stated it is her former husband's responsibility, although it was not listed in their property settlement. (Tr. 34; AE 4.) It is reported as a joint account. (Tr. 40.) It is unresolved.

²The SOR incorrectly alleged this debt as \$1,963.

³The SOR incorrectly alleged this debt as \$247.

⁴The SOR incorrectly listed this debt as \$4,2177.

13. (SOR ¶ 1.m) Applicant denied owing the \$704 cell phone debt on the basis that it is her former husband's responsibility, although it was not listed in their property settlement. (Tr. 37.) It is reported as an individual account in her name. (Tr. 39, 40.) It is unresolved.

14. (SOR ¶ 1.n) This \$509 debt is in collections. It is reported as an individual account in Applicant's name. (Tr. 41-44.) It is unresolved.

15. (SOR ¶ 1.o) This \$757 is owed to a property owner for a debt arising from a lease executed by Applicant. She said it is a fee for moving out. It is reported as an individual account in her name. (Tr. 41-44, 55.) It is unresolved.

16. (SOR ¶ 1.p) This \$1,762 debt is an unpaid medical bill from 2016. It is reported as an individual account in her name. (Tr. 41-44.) It is unresolved.

17. (SOR ¶ q.) This \$11,223 medical debt was paid by Applicant's insurance in 2015. (AE 7.) It is resolved.

Applicant was earning about \$30,000 annually before being laid off. (Tr. 27.) She said she cannot afford the payments requested by creditors to begin resolving the alleged debts. (Tr. 45.) She is currently receiving unemployment benefits. (Tr. 24, 46.) She pays \$245 a month to her former husband for child support for her 11-year-old son who resides with him. (Tr. 20; AE 3.) She has not participated in credit or financial counseling, but uses a credit-monitoring program. (Tr. 49.) Her budget from March 2016 listed her net income as \$1,429 and expenses as \$1,850, leaving a monthly shortage of more than \$400. (AE 2.)

A witness testified on behalf of Applicant. She has known Applicant since they were in grade school. She is familiar with Applicant's financial struggles over the years. She said Applicant is dedicated to her job. (Tr. 56-58.)

Applicant submitted two letters of recommendation. A former supervisor stated that Applicant is knowledgeable, dedicated, and an asset for any employer. Her most recent supervisor is impressed with Applicant's abilities and work values. He recommends her highly. (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.⁵

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 before 2011 and are 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.

The evidence does not establish mitigation under AG ¶ 20(a). Applicant's financial problems have been ongoing for six or seven years, and cast doubt on her reliability and good judgment. The evidence establishes partial mitigation under AG ¶ 20(b). Some of Applicant's financial problems resulted from a period of unemployment,

⁵ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

and as a consequence of her separation from her husband in 2012 and divorce in 2015. Those were circumstances beyond her control. However, she did not provide evidence that she acted responsibly under the circumstances, which is necessary for full mitigation under this condition. The evidence does not establish mitigation under AG ¶ 20(c). Applicant presented a budget, which does not cover ongoing expenses or payments on delinquent debts. There are insufficient indications that her financial problems are under control. The only SOR debt that is resolved relates to a medical bill that her insurance company paid in 2015.

Applicant has not made good-faith efforts to pay, resolve, or establish payment plans for any of the other 16 SOR-alleged debts, including five smaller debts between \$246 and \$579. There is no evidence to establish mitigation under AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must 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 trust 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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. Applicant is a 36-year-old hardworking woman, as noted by her employer. Her separation in 2012, divorce in 2015, and a period of unemployment adversely affected her ability to manage her financial obligations. In March 2015, she discussed 21 financial delinquencies with an investigator and indicated that she was waiting for her divorce to be completed, in order to know which debts were her legal responsibility. In December 2015, the court entered a final order in her divorce case. She testified that she needs a modification of that property settlement agreement. There is no evidence that, within the past year, she took affirmative steps to begin resolving any debts. She has not established a plan to address her delinquencies or record of questionable financial management.

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 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 through 1.p:	Against Applicant
Subparagraph 1.q:	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 access to classified information. National security eligibility is denied.

Shari Dam
Administrative Judge