



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



In the matter of:)
)
) ISCR Case No. 15-05637
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On February 28, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 27, 2016, and elected to have her case decided on the written record. On June 2, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The Government submitted documents identified as Items 1 through 6. The FORM was mailed to Applicant, and she received it

on June 7, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM or object to the Government's evidence. Items 1 and 2 are the pleadings in the case. Items 3-6 are admitted into evidence without objection. The case was assigned to me on March 13, 2017.

Findings of Fact

Applicant admitted all the allegations in the SOR and provided an explanation. Her admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 60 years old. She and her husband have been married since 1980. They have four grown children. Applicant served on active duty in the U.S. Navy from 1978 to 1981 and spent several years thereafter in the Navy Reserve. She was honorably discharged. She attended a vocational school from August 2005 to May 2006, and earned a certificate in computer graphics. She also earned her commercial driver's license (CDL) in November 2010. Since then, she has worked for a variety of companies as a long-haul truck driver. She has had the same employer, a federal contractor, since October 2014. She drives with her husband.¹

The SOR alleges six consumer debts totaling about \$34,037. SOR debts ¶ 1.a (\$2,673), ¶ 1.b (\$5,126), ¶ 1.c (\$8,110), ¶ 1.d (\$5,059), ¶ 1.e (\$8,132), and ¶ 1.f (\$4,937) are consumer or credit card accounts that are charged off or in collection. Credit reports from November 2014 and January 2016 verify the debts.²

From September 2005 to August 2008, Applicant ran her own advertising business. When it began losing revenue, she used credit cards to pay business expenses. About \$25,000 in outstanding debts remained after her business failed. She attributed the failure of the business to the recession. Applicant made minimum payments on her credit cards until additional interest put her over her credit limits. Her creditors then charged additional fees and began requesting higher monthly payments, which she could not pay. She stopped paying her credit card bills in 2011. After the IRS audited the tax returns of the business and found errors, Applicant owed \$15,000 in taxes and penalties.³

After her business failed in August 2008, Applicant was unemployed until about May 2010. She was supported by her husband's income. He worked for a year as a

¹ Items 3, 4.

² Items 5, 6.

³ Items 2, 3, 4.

civilian contractor in Iraq in order to pay the family's debts. Her husband also had his own debts, which they prioritized, along with the IRS debts.⁴

Applicant has worked as a truck driver since May 2010, but her employment history is sporadic. She sometimes works for several weeks, other times a couple of days a week, or not at all. In February 2015, she and her husband each had a combined monthly income of \$8,800. They had \$12,000 in a checking account. She stated that she had monthly household expenses of \$700. She hoped to begin paying her debts in March 2015.⁵

Applicant acknowledges that she and her husband "got in over our heads" financially, and have "slowly started working our way out of it."⁶ They consulted an attorney to assist them and have considered bankruptcy. They hope to negotiate settlements with her creditors and then pay them off one at a time.⁷ Applicant provides no documentation or other indication that she has contacted any of her creditors in an effort to pay, settle, or resolve the delinquent debts in the SOR.

Policies

When evaluating an applicant's suitability for a security clearance, the 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, which are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

⁴ Items 2, 3, 4.

⁵ Item 4.

⁶ Item 2.

⁷ Items 2, 3, 4.

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. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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.

Section 7 of EO10865 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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.⁸

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent debts totaling over \$34,000 that began accumulating in 2008. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

Applicant has had delinquent debts for many years. She failed to provide evidence that she has paid or resolved any of the alleged SOR debts. There is insufficient evidence to conclude that her financial problems are unlikely to recur. Her delinquent debts continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's financial problems began with the failure of her business. Her subsequent employment in the trucking industry has been sporadic. These are both circumstances beyond her control. However, for the full application of AG ¶ 20(b),

⁸ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant must provide evidence that she acted responsibly under the circumstances. Applicant used her credit cards to pay expenses, until she was no longer able to do so. The IRS audit of her business resulted in an additional \$15,000 in taxes and penalties. There is no evidence of an ongoing tax debt. Applicant has not shown that she has made any payments towards her remaining delinquent debts, or has a reasonable plan for resolving them. There is insufficient evidence to conclude Applicant has acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant and her husband consulted an attorney and considered bankruptcy. This warrants application of the first part of AG ¶ 20(c). They decided instead to pursue negotiations with her creditors. She has provided no documentary evidence that she has settled or made any payments towards any of her SOR debts, or has any arrangements in place to do so. Without additional evidence, there are not clear indications that Applicant's financial problems are under control. The second part of AG ¶ 20(c) does not apply.

Applicant and her husband prioritized his debts, and the IRS debt, over the consumer debts in the SOR. She did not provide any specific information about her actions. Although this may be a reasonable way to manage their delinquent debts, she provides no corroborating documentation, or specific information about the details of any actions regarding the SOR debts. She indicates that she plans to continue working to pay her debts. Applicant has not provided sufficient evidence to establish that she has a reasonable plan to resolve her debts, or that she has taken steps towards establishing a reliable financial track record. Applicant has not provided sufficient evidence of her good-faith efforts to repay her creditors or otherwise resolve her debts. AG ¶¶ 20(d) does not apply.

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 the 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 60 years old. She served honorably in the U.S. Navy and Navy Reserve. Her debts began with a business failure in 2008, though they have continued for years afterward. To her credit, she has reinvented herself and found a new career, with her husband, as a long-haul truck driver. However, she has a long history of financial instability, and significant unresolved delinquencies. She has not implemented a realistic plan for resolving them. Applicant does not have a reliable financial track record at this time. Her finances remain a security concern. She has failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.f: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge