



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



In the matter of:)
)
) ISCR Case No. 15-06110
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2017

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on January 26, 2015. On October 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.²

¹ Also known as a Security Clearance Application (SCA).

² 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* (Directive) (January 2, 1992), as amended; and the adjudicative guidelines (AG), implemented by the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. ¶ 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant responded to the SOR on November 13, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on February 1, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 16, 2016. Applicant did not submit a response. The case was assigned to me on October 19, 2016. The Government's exhibits included in the FORM (Items 1 to 7) are admitted into evidence without objection. Additionally, the Government moved to amend the SOR by adding ¶ 1.mm, alleging Applicant filed Chapter 7 bankruptcy on November 13, 2015.

Findings of Fact

The SOR alleges Applicant is indebted on 38 delinquent debts totaling approximately \$38,000, and an allegation that Applicant filed Chapter 7 Bankruptcy in 2015. Applicant admitted all the allegations except she denied SOR ¶¶ 1.a, b, n, o, r, and mm.³ She provided explanations with each of her answers to the SOR allegations, and included four documents.⁴ Her admissions, explanations and documentary evidence are incorporated in my findings of fact.

Applicant is 37 years old and employed by a defense contractor since 2014. She is unmarried and has three children. She completed some college and is seeking a security clearance. She was unemployed from October 2007 to March 2008.

Applicant's debts include two civil judgments for a medical debt and apartment lease account. The remaining debts were placed in collections and include medical accounts, student loans, credit accounts, telephone and utility accounts, and county personal property tax. The SOR allegations and bankruptcy filing are supported in the record.

Generally, Applicant acknowledged the SOR debts, but in some cases disputed the amount or status, claiming most of the debts have been included in her Chapter 7 bankruptcy. Applicant filed Chapter 7 bankruptcy on November 11, 2015, after completing court-mandated financial counseling. She did not provide evidence of the current status of the bankruptcy case, final discharge order, or her current financial status.

She also provided information on another counseling service, but no evidence that she completed it. Applicant noted in her Personal Subject Interview (PSI) that she stopped making payments on her student loans in 2010, and they were defaulted in 2011. She

³ SOR ¶ 1.mm is presumed to be denied since Applicant did not respond to the FORM.

⁴ Certificate of Financial Counseling; Notice of Bankruptcy Case Filing; District Court Civil Case Information Sheet (judgment); and budget counseling information sheet.

claimed that she is in a payment plan under a student loan rehabilitation agreement, but did not provide evidence of the plan or a history of payments under the plan.

Law and 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 to be 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, administrative judges apply the guidelines 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(a), 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.

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.⁵ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁶

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." It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Under *Egan*, EO 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁷

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity,

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁷ *Egan*, 484 U.S. at 531.

consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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 adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant incurred longstanding delinquent debts that have largely gone unresolved. She filed Chapter 7 bankruptcy after the SOR was issued, and has not shown a final resolution of the bankruptcy or her current financial status. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b), as disqualifying conditions.

The act of filing a Chapter 7 bankruptcy alone is not a disqualifying condition. SOR ¶ 1.mm is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant allowed her debts to remain unresolved for many years. Although she suffered a period of unemployment that may have contributed to her financial problems, she has been steadily employed in her current position since 2014. She filed Chapter 7 bankruptcy, but has not shown the current status of the case or that her present financial condition is stable. I have no information about her financial track record since filing bankruptcy that would show similar issues are unlikely to recur in the future. There is evidence of completed financial counseling, but there is no evidence that Applicant's financial problems are resolved or under control.

Her overall financial irresponsibility and her current financial condition cast doubt on her reliability, trustworthiness, and good judgment. I have inadequate information to determine that her financial circumstances are under control or that she is willing and able to meet her past and future financial obligations.

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(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 all of the potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the absence of an updated financial record leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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 – II:	Against Applicant
Subparagraph 1.mm:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge