



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



In the matter of:)
)
) ISCR Case No. 15-06159
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

08/02/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On March 25, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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 (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

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

Applicant answered the SOR on April 7, 2016, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on August 3, 2016. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 10. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on June 2, 2017.

Findings of Fact

Applicant admitted all the allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. She received a General Equivalency Diploma. She took a couple college classes, but did not complete them. She married in 1998. She has three grown children from the union, ages 31, 29, and 28. She is working two part-time jobs, while seeking full-time employment that requires a security clearance. She disclosed two periods of unemployment from November 2013 to April 2014 and from August 2012 to October 2012. She did not disclose her current income or her husband's employment status or income.²

In 2009, Applicant filed Chapter 13 bankruptcy. She listed her liabilities as approximately \$37,000. In her November 2014 interview with a government investigator, she explained she had to file bankruptcy because she overspent and fell behind on her debts. She stated that she made monthly payments between \$300 and \$400 until the bankruptcy was dismissed in 2013 after she resigned from her job due to "the long drive." She acknowledged to the investigator that she still owed the debts.³

Applicant disclosed on her security clearance application (SCA) that in October 2011, she was arrested and charged with deposit account fraud/bad checks \$499 or less. In November 2011, she was found guilty, sentenced to 12 months probation and fined. She completed the terms of the sentence.⁴

The SOR alleges 19 delinquent debts for medical services, cell phone contracts, student loans, defaulted vehicle loans, and a returned check, (ranging from \$27 to \$10,185) totaling approximately \$30,283. Applicant's admissions and credit reports from March 2013, July 2015, and January 2016, substantiate the debts alleged in the SOR.⁵

² Item 4.

³ Items 7, 10.

⁴ Items 4, 5, 7.

⁵ Items 3, 6, 7, 8, 9.

In her answer to the SOR, Applicant stated that she is attempting to pay her delinquent bills and makes some payments when she has extra money. She stated she made two payments toward one of the cell phone bills and her student loan. She stated she was a hard worker, has had some hard times in her life, and wanted an opportunity to prove herself. In the FORM, the Department Counsel explained it was important to provide documents to show the actions Applicant may have taken to resolve her financial issues. None were provided. She did not disclose any information about her current income, budget, counseling, or other financial matters.⁶

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 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. 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

⁶ FORM; Item 3.

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 EO 10865 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 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.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant has experienced financial difficulty since before 2009 when she filed bankruptcy. She has numerous delinquent debts that she is unable or unwilling to pay.

She has a conviction for deposit account fraud/bad checks. 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, 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 admitted all of the delinquent debts alleged in the SOR. There is no evidence to substantiate she is taking action to resolve them. During her personal subject interview in 2015, she indicated she would pay them when she had a good job. She mentioned in her answer to the SOR that she had made two payments on her debts, but did not provide documentary evidence. Applicant's history of being unable or unwilling to resolve her debts is ongoing. She also has a conviction for deposit fraud/bad checks, which is a serious concern. There is insufficient evidence to conclude that it is unlikely similar circumstances will recur. Her failure to address even the smallest of her debts and her conviction casts doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant disclosed periods of unemployment, which likely affected her ability to pay her bills. However, she also indicated that she stopped making payments on her Chapter 13 bankruptcy because she resigned from her job, a condition that was within her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant failed to provide evidence to make such a conclusion. She did not provide proof of payments she may have made to resolve her delinquent debts. There is no information about her current finances. I cannot find that under the circumstances she has acted responsibly. I find AG ¶ 20(b) partially applies.

There is no evidence that supports Applicant has had financial counseling or that there are clear indications her financial problems are being resolved or under control. There is no evidence that she has initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts. AG ¶¶ 20(c) and 20(d) do 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(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.

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(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old. She has a history of financial problems that include a dismissed Chapter 13 bankruptcy in 2013, a conviction for deposit account fraud/bad checks in 2011, which is a concern, and numerous delinquent debts. She did not provide sufficient evidence in mitigation. The record evidence leaves me with serious 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.u: 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.

Carol G. Ricciardello
Administrative Judge