



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06841

Appearances

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

05/18/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

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

Statement of the Case

On February 26, 2016, the Department of Defense (DOD) issued 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR and elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on July 6, 2016. Applicant received the FORM on July 14, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence. She provided an undated-one-page response to the FORM. Her response has been marked as Applicant's Exhibit

(AE) A and is admitted without objection. The Government's evidence, identified as items 1 through 7, is admitted into evidence without objection. The case was assigned to me on May 1, 2017.

Findings of Fact¹

Applicant is 52 years old. She graduated from high school in 1983 and she obtained her associates degree in 2006. She was married from 1984 to 2009 when she divorced her first husband. She re-married in 2012, and she and her current husband have six adult children between them. Applicant has been employed by federal contractors for over 11 years. Applicant reports having a previous security clearance from 2009. She served in the Navy from 1983 to 1989 and obtained an honorable discharge. Applicant did not disclose her delinquent debts in section 26 of her August 27, 2014, Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). However, she did state there that she started having financial problems around the time of her divorce, and her second husband was out of work for almost one year from 2011 to 2012. Around that same time, four of their children moved back into Applicant's home along with her grandchildren. Applicant supported all of them.²

Applicant admitted five of the six delinquent debts alleged in the SOR, totaling approximately \$25,834. In her Answer to the SOR, Applicant denied SOR ¶ 1.f, as it is a duplicate of SOR ¶ 1.d. Applicant described some of the adversity that she has overcome, including a bad divorce, four surgeries, and storm damage to her home from a hurricane."³ Her second husband had a catastrophic motorcycle accident and he was out of work for one year while his arm was being re-constructed. Moreover, Applicant stated in her response to the FORM that she needs cataract surgery, and she is hoping to receive some money that is owed to her by her ex-husband, pursuant to their divorce agreement. She has produced no evidence to show that she had a divorce agreement or decree, or that she has received this expected money. These debts are not resolved.

Applicant's financial problems started in 2011 when her husband became unemployed after his employer lost a contract.⁴ Subject claims that she contacted many of her creditors about delinquent debts, but she could not pay these creditors as her income was insufficient. She has produced no documents to substantiate her efforts to settle these debts, or dispute them. In her subject interview in March 2015, Applicant described expenses related to divorce, moving, problematical tenants, and six children,

¹ Unless stated otherwise, the source of the information in this section is Applicant's March 24, 2014, Questionnaire for National Security Positions (SF 86) or Security Clearance Application (SCA). (Item 3).

² Item 4, page 28, optional comment.

³ Item 3, page 2.

⁴ Item 6, page 4.

plus grandchildren, all living with her. Most of the children are now grown, and they have moved out.⁵ Also, her husband is now employed again. None of her delinquent debts alleged in the SOR are related to gambling, alcohol or illegal drug use. Applicant had no credit counseling or debt-consolidation services, and she produced no monthly budget. There is no evidence in the record that she has disputed any of the debts alleged in the SOR, or settled them. These debts have not been resolved.

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 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

⁵ Item 6, page 5.

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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant admitted to virtually all of the delinquent debts alleged in the SOR, except for the duplicate debt alleged at SOR ¶ 1.f. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁶

⁶ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

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 problems were largely beyond the person's control, 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 provide evidence of actions to resolve the issue.

Applicant and her second husband have endured multiple surgeries, storm damages and unforeseen expenses related to raising six children, plus the children of their children. Her perseverance in the face of adversity is commendable. While these may have been conditions beyond her control, Applicant has not demonstrated that she acted responsibly under the circumstances. Applicant indicated she contacted creditors to try to compromise and settle some of her delinquent debts. Yet, Applicant did not produce any documents to show this. She did not obtain debt-consolidation services or credit-counseling, and she failed to demonstrate that she is making progress in resolving any of her delinquent debts. She produced no budget, or payment plan. Her debts remain unresolved. Her financial problems are recent and ongoing. Applicant provided insufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances unlikely to recur. The mitigating conditions enumerated above 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(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.

Applicant's finances remain a security concern. There are ample indications that Applicant's financial problem are not under control. She has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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.e:	Against Applicant
Subparagraph 1.f:	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 a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge