



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



In the matter of:)
)
) ISCR Case No. 15-07663
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2017

Decision

RICCIARDELLO, Carol G., 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 May 5, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on June 1, 2016, and elected to have her case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on July 6, 2016. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence identified as Items 2 through 6, and they were admitted into evidence. Applicant submitted documents that were marked as Applicant Exhibits (AE) A through D, and they were admitted into evidence without objection.¹ The case was assigned to me on November 4, 2016.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.q. She denied SOR ¶ 1.m. She did not admit or deny allegations in ¶¶ 1.r through 1. z, but provided comments. I have considered her responses as denials. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. She attended college at various times, but has not earned a degree. She was married from 1996 to 1999. She has a 19-year-old child. She remarried in 2013. Applicant did not list any periods of unemployment in her security clearance application. She has worked for a federal contractor since March 2015.²

Applicant attributed her financial problems to a chronic medical condition. She stated that before 2010, she was a single parent and would spend days in the hospital at different times. She would miss work and did not have health insurance. After she moved in 2010, her work history became stable, and she was able to get medical benefits, which allowed her health to improve. Her son was injured in a school altercation, and was having mental health issues, which added to her medical bills. She had difficulty paying for necessities and her medical bills were not paid.³

Applicant stated that after she got remarried in 2013, she started learning how not to live paycheck to paycheck. She stated that through a financial counseling program she has started to create a clear plan on resolving her debts.⁴

In her response to the FORM, Applicant provided a list of the SOR debts and she stated that several medical debts were consolidated into the 2013 judgment that was entered against her as reflected in SOR ¶ 1.a.(\$5,705). The law firm handling the collection of payments made on the judgment provided a letter dated July 15, 2016, indicating that the balance on the account is \$5,065, including court costs, attorney fees, and accrued interest. In Applicant's answer, she stated that the debts in SOR ¶¶ 1.d, 1.e, 1.f, 1.j, 1.k, and 1.l, were consolidated into the judgment. In her response to the FORM, she indicated the debts in SOR ¶¶ 1.d, 1.e, 1.f and 1.z were consolidated into the judgment. It appears she has been making payments of approximately \$150 toward

¹ Each exhibit includes multiple pages.

² Item 3.

³ AE A.

⁴ AE B.

the judgment since approximately 2013, and it has been distributed to many different medical accounts.⁵ Without further specific information to identify each account included in the judgment, I conclude that the accounts that Applicant indicated in her FORM response with the accompanying documents from the attorney are the ones that are being paid.

Applicant stated in her answer to the SOR that she paid or was paying the debts in ¶¶ 1.o through 1.z. She did not provide any documented information to substantiate her statement. She admitted the debts in SOR ¶¶ 1.b, 1.c, 1.i, 1.j, 1.n and 1.q, but did not provide any information on these debts.⁶

In her FORM response, she indicated she will pay in the future the debts in SOR ¶¶ 1.b, 1.c, 1.i, 1.k, 1.l, 1.o, 1.p, 1.s, and 1.t. She merely listed the debts in SOR ¶¶ 1.g, 1.h, 1.j, 1.u, 1.v, 1.w, 1.x, 1.y and did not provide any comment as to what her intentions were regarding these debts.⁷

In Applicant's FORM response, she stated that she disputed the debt in SOR ¶ 1.m and had it removed from her credit report. She did not provide a complete copy of her credit report to verify it is removed. She stated she disputed the debt in SOR ¶ 1.n because she believes she paid the account, but had not heard from the creditor, and will include it in her repayment plan. She also stated that she disputed the debts in SOR ¶¶ 1.q and 1.r, but will pay them if they are verified.⁸

Applicant provided a worksheet, presumably that is part of her payment plan, that included a list of 20 debts with amounts owed, some of which are included in the SOR. There is no indication that she has made payments on these debts. There is no indication when she anticipates paying the balance of her judgment and when she will begin addressing the other delinquent debts. The debts in SOR ¶¶ 1.b, 1.h, 1.l, 1.m, 1.n and 1.q are not medical debts. Applicant did not provide any information about her current finances.⁹

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.

⁵ AE A, B.

⁶ Item 2.

⁷ AE A.

⁸ AE A, C.

⁹ AE D.

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 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.¹⁰

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 many delinquent debts that began to accumulate before 2010. 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

¹⁰ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 has numerous delinquent debts that are unresolved. She stated she is creating a plan to repay her delinquent debts, but failed to state if she has started the plan, or made payments. She did not include any information about her current finances. She is making payments on a judgment that includes some SOR debts, but at this time, I cannot find her financial problems are unlikely to recur. Her delinquent debts are recent and her failure to show specific actions to resolve them casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant attributed her financial problems to a chronic medical problem, medical expenses incurred for her son, and no health insurance. These were circumstances beyond her control. For the full application of AG 20(b), Applicant must have acted responsibly under the circumstances. Applicant stated that after 2010, she had medical insurance and a more stable work history. However, she did not begin to make any payments on her medical debts until a judgment was entered in 2013. She provided evidence that she is making payments on debts that are included in the judgment. She stated she is creating a plan for resolving the other debts, but failed to provide evidence that she has executed the plan and made any payment debts. AG ¶ 20(b) marginally applies.

Applicant indicated she is participating in a financial program. She did not provide evidence that she has implemented the program and has begun to make payments towards her delinquent debts, other than the judgment previously mentioned. She did not provide evidence of her current financial status. I cannot find that her financial problems are under control. Only the first part of AG ¶ 20(c) applies.

Applicant is making monthly payments to resolve the judgment entered against her. There is no evidence Applicant has made good-faith efforts to repay any of the other overdue creditors. Applicant did not voluntarily begin paying her delinquent debts. She has had stable employment since 2010 and with her present employer since 2015, but did not start paying any creditor until the judgment was entered against her. There is insufficient evidence to conclude Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts. AG ¶ 20(d) does not apply.

Applicant disputed some delinquent debts alleged as being paid or not belonging to her, but if verified she will include them in her payment plan. Applicant provided an incomplete credit report. There is insufficient documented proof to substantiate the basis of her disputes and evidence of her actions to resolve the issues. AG ¶ 20(e) 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 41 years old. She explained that before 2010 she had chronic medical problems and accrued numerous medical debts. After then she had a stable work history and medical insurance. She did not begin to pay any of her delinquent debts until after a judgment was entered against her in 2013. She stated she is creating a plan to pay her delinquent debts, but there is no evidence the plan has been implemented or any of the remaining debts are being paid or resolved. She failed to meet her burden of persuasion. She has not established a reliable financial track record. 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:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant

Subparagraphs 1.g-1.y:	Against Applicant
Subparagraph 1.z:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge