



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



In the matter of:)
)
) ISCR Case No. 15-08130
)
Applicant for Security Clearance)

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2017

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 May 25, 2016. On June 14, 2016, 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 (Exec. Or.) 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 July 7, 2016, 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 August 10, 2016.

A complete copy of the FORM was provided to Applicant, who had an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 1, 2016. She did not respond to the FORM. The case was assigned to me on May 19, 2017. All exhibits are admitted into evidence without objection.

Findings of Fact

The SOR alleges Applicant has 10 delinquent consumer and medical debts totaling approximately \$23,896. Applicant admitted all the allegations, and provided explanations in her answer to the SOR. Her admissions and explanations are incorporated in my findings of fact. Applicant is 42 years old and has been employed by a defense contractor since 2016.³ She graduated from high school in 1992. She was married in 1994 and divorced in 1998. She has one adult child. Her last security clearance was granted in 2011. Applicant has worked over 20 years supporting DOD as a government employee or contractor. She stated in her answer that she is currently on administrative leave pending her security clearance status.⁴

Applicant noted in her answer that she incurred delinquent debts during periods of unemployment. She was most recently unemployed from December 2013 to August 2014, and April 2015 to June 2015. Up to 2014, she did not have delinquent debts and held a high credit score. She received unemployment benefits from January 2014 to June 2014, but the benefits were insufficient for her to meet her financial obligations. Her current position, which began in April 2016, is the first job that pays equal to her last government position in 2013.⁵ She incurred medical debts while unemployed, without insurance. Her other debts resulted largely from consumer credit accounts, some of which are in collections. None of the debts have been paid, but she noted her intent to repay her debts in full.

In her personal subject interview (PSI), Applicant stated that she has not sought financial counseling.⁶ No information was provided regarding the current status of the SOR debts or her current financial condition.

³ GE 2.

⁴ GE 2.

⁵ GE 2.

⁶ GE 6.

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.⁷ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁸

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*, Exec. Or. 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.⁹

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally

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

⁸ *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).

⁹ *Egan*, 484 U.S. at 531.

permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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 has delinquent debts that have not been resolved. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following may be 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's debts remain unresolved. She has suffered recent periods of unemployment and underemployment, but has not shown that she acted responsibly to resolve debts once she was financially solvent. I have no information about her current financial status or that similar issues are unlikely to recur in the future. Generally, Applicant has not shown that her financial problems are being resolved or are under control. Her unresolved delinquencies cast doubt on her reliability, trustworthiness, and good judgment.

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 documentary evidence of good-faith efforts to resolve delinquent debts and an improved financial status, 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
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Subparagraphs 1.a – 1.j:	Against Applicant
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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