



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-08412

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated March 21, 2016. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated May 12, 2016.¹ Applicant received the FORM on May 24, 2016. Applicant did not respond to the FORM. The case was assigned to me on April 7, 2017.

¹The Government submitted five items for the record.

Based on a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations listed on the SOR under Guideline F (Financial Considerations). (Item 2)

Applicant is a 44-year-old data-management employee for a defense contractor. She graduated from high school in 1992. (Item 5) She is married and has three children. Applicant has worked for her current employer since 2012. She completed a security clearance application in 2015. (Item 3)

Financial Considerations

The SOR alleges 66 allegations, which are mainly medical accounts. Applicant's delinquent debts total about \$28,000. (Item 4) Applicant disclosed that she had financial issues when she completed her SF-86. The medical accounts appear to be in collection from about 2008 to 2015. (Item 4) Applicant's March 2015 credit bureau report reflected that at that time, she had several accounts that were marked "pays as agreed."

In her 2015 investigative interview, Applicant explained that she was self-employed from 2000 to 2012. The medical bills are the result of back and kidney health issues that she has experienced since about 2008. She recalled that in 2014, her wages were garnished for one medical account, and she believed that it was now paid in full. She had no other details. Applicant had multiple procedures for her health problems. Some of the accounts are credit accounts that she used to pay for daily expenses. Applicant told the investigator that she was in the process of arranging payment plans. Applicant had other collection accounts (non-medical) that she could not identify. She elaborated that she had not been contacted by any creditors and would conduct a credit check. (Item 5)

Applicant did not respond to the FORM to explain what if anything she did to resolve any debts. Many of the medical debts were small amounts, but there is no evidence in the record of any payments for them. Without such information it is not possible to assess what attempts, if any, Applicant made to resolve any of her delinquent debts. Applicant did not meet her burden of proof in this case. She did not provide information to mitigate the security concerns under the financial considerations guideline.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied

in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 the applicant may deliberately or inadvertently fail to protect 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 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." ⁵ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. ⁷ The decision to deny an individual a

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and
- (c) a history of not meeting financial obligations.

The Government produced credible evidence to establish that Applicant incurred delinquent debt, and Applicant admitted debts alleged in the SOR. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), and 19(c)

AG ¶ 20 provides conditions that could mitigate the security concerns:

- (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 told the investigator that she had health issues and many medical accounts that were delinquent. She did not note that she had financial counseling. She experienced circumstances beyond her control, but she has not shown any evidence that she made good-faith efforts after returning to work in 2012 to repay her accounts. Thus 20(b) cannot apply as she did not show that she acted responsibly under the circumstances. No other mitigating factors apply in this case.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 44 years old. She has been working since 2012 for her current employer. She was self employed before that time. She has many medical accounts that are delinquent due to her health issues. She admitted all the debts listed in the SOR, but provided no information that she acted responsibly to resolve any or all of her delinquent

debts. Applicant did not provide information to carry her burden of proof in this case by providing evidence of any efforts to pay her debts.

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

Subparagraph 1.a-1.nnn: 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge