



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



In the matter of:)
)
) ISCR Case No. 15-08467
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 29, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on November 29, 2016, and requested a hearing before an administrative judge.

The case was assigned to me on February 13, 2017. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2017, scheduling the hearing for April 4, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, but she did not submit documentary evidence. The record was held open for Applicant to submit additional information. She did not submit any additional information. DOHA received the hearing transcript (Tr.) on April 13, 2017.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. She has worked for her current employer since May 2013. She has an associate's degree, which was awarded in 2007. She attended additional college classes in 2008 without earning another degree. She has lived with her boyfriend for about six years. She has two teenage children.¹

Applicant was unemployed from about June 2008 through May 2010. She has been consistently employed since May 2010. Her children have had some medical problems. She was arrested and convicted twice between 2008 and 2011 for driving under the influence (DUI). She paid about \$6,500 in fines for the two convictions.²

The SOR alleges three medical debts totaling \$483; two miscellaneous delinquent debts totaling \$1,640; and a student loan that was \$1,210 past due with a \$13,529 balance. Applicant admitted all of the allegations. All of the debts are also listed on at least one credit report.

Applicant submitted a Questionnaire for National Security Positions (SF 86) in July 2014. She reported \$30,399 in defaulted student loans. She wrote that she was "[t]rying to make monthly payments."³

Applicant was interviewed for her background investigation in October 2014. She discussed her financial problems. After she lost her job, she did not call and attempt to have her student loans deferred. She stated that she suffers from anxiety and has a hard time talking to people. She thought it was easier to ignore them. She told the investigator that she consolidated her student loans, and she was current on her payments.⁴

Applicant's mother passed away in 2014. Applicant and her two siblings inherited their mother's house. Her mother provided that Applicant's stepfather could live in the house provided he complied with certain conditions. He did not comply with the conditions, did not pay the mortgage loan, used drugs, and hoarded. Applicant and her siblings spent a large amount on attorney's fees to evict him, hauling away his junk, and repairing the damages to the house. Applicant estimated her share at \$30,000. She stated that she paid her student loans for about two years, but stopped paying them in about April 2015 because of the expenses associated with the house.⁵

¹ Tr. at 16-17, 27-28, 40-41; GE 1, 2.

² Tr. at 16, 28, 32; GE 1. The DUIs were not alleged in the SOR and will not be used for disqualification purposes. They will be considered only for their effect on Applicant's finances.

³ GE 1.

⁴ GE 2.

⁵ Tr. at 21-25.

Applicant has been living in the house with her boyfriend and children since about March 2016. The house does not have a mortgage loan, and she does not pay rent to her siblings. She pays the property taxes and for the upkeep of the property.⁶

Applicant inherited about \$45,000 from her mother and her grandmother. She did not receive the first payment until February 2017. She testified that she consolidated several student loans into one loan of about \$45,000. She stated, without corroborating documentation, that she has been paying an income-based \$45 per month on the consolidated loan since about December 2016. She has at least one other student loan that has not been consolidated and is not being paid.⁷

Applicant received counseling from a financial planner. She has not paid any of the non-student loans in the SOR. She stated that the SOR provided her with the names of her creditors. She indicated that she would use her inheritance to pay her debts. She was informed of the importance of documentation, and she was given more than two months after the hearing to submit documentary evidence, but she failed to submit anything.⁸

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(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.

⁶ Tr. at 25-27.

⁷ Tr. at 16-21, 27, 30-31, 36.

⁸ Tr. at 16-18, 31, 34-40.

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.”

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 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 the applicant may deliberately or inadvertently fail to safeguard 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 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* EO 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had financial problems including defaulted student loans and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 attributed her financial problems to her unemployment, her children's medical problems, and the actions of her stepfather. However, she has been consistently employed since May 2010; she paid about \$6,500 in fines for her two DUI convictions; and she received about \$45,000 in inheritance.

Applicant stated, without corroborating documentation, that she has been paying \$45 per month on the consolidated student loan since about December 2016. She was informed of the importance of documentation, and she was given more than two months to submit documentary evidence, but she failed to submit anything. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). She stated that she intended to use her inheritance to pay her debts. The

Appeal Board has further held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)). There are no applicable mitigating conditions.

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(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.

Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.f:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge