



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



In the matter of:)
)
) ISCR Case: 15-08561
)
Applicant for Security Clearance)

Appearances

For Government: Douglas Velvet, Esquire, Department Counsel
For Applicant: *Pro se*

August 14, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On October 14, 2014, Applicant submitted a security clearance application (SF-86). On June 29, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on August 16, 2016. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On September 8, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 7 Items, were received by Applicant on October 4, 2016. In the FORM, the Government amended the

SOR to add two additional subparagraphs under Guideline F, and one paragraph under Guideline E. The FORM also notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant responded to the FORM on November 28, 2016. She did not object to the Government's amendment to the SOR, to include subparagraphs 1(i) and 1(j) under Guideline F, or the additional paragraph under Guideline E, 2(a) of the SOR. DOHA assigned the case to me on July 11, 2017. Items 1 through 7 are admitted into evidence. Applicant's response to the FORM is marked as Exhibit A, and is also admitted. The Government's amendment to the SOR is also granted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 45 years old, and is married with three children. She has a Master's degree. She is employed as a Physician Assistant for a defense contractor. She is seeking to obtain a security clearance in connection with her employment.

The SOR alleges that Applicant filed for bankruptcy on three separate occasions, and that she has five delinquent debts totaling approximately \$20,676. Most of the delinquent debt is \$18,000 owed to the Internal Revenue Service (IRS) for back taxes, for tax years 2010 and 2011, while the remaining debt is owed to other creditors. Applicant admits the debt to the IRS and denies the other debt. She also admits to filing bankruptcy on three occasions. (Government Exhibit 1.)

Applicant explained that in April 2010, she lost her job while on maternity leave. She remained unemployed until November 2010. In December 2010, her husband, a corporate attorney, left his position for another job. His salary was significantly reduced by \$110,000 to \$115,000. Applicant states that her husband is an intelligent attorney, who was very reliable for the most part. At some point in 2009 or 2010, he began suffering from severe depression. Unbeknownst to the Applicant his depression began to affect his ability to perform and meet his responsibilities at work and at home. Prior

to his illness, he had handled all of the financial household matters and he had filed their income tax returns on time. After realizing that he was ill, Applicant learned that matters were not being handled properly. (Applicant's Exhibit A.)

Applicant explained that her tax debt is the result of her financial problems. She fell behind on her finances and sought legal advice. It was recommended that they filed for Bankruptcy. Following this advice, Applicant filed for Chapter 13 Bankruptcy on December 2, 2013; Chapter 11 Bankruptcy on August 24, 2014; and Chapter 11 Bankruptcy on June 21, 2015. Each bankruptcy was subsequently dismissed. (Allegations 1(a), 1(b), and 1(c) of the SOR.)

In regard to Applicant's delinquent debts set forth in the SOR, her credit reports dated November 21, 2014, and May 19, 2016, reflect that they remain owing. (Government Exhibits 3 and 4.)

1(d) a debt to a creditor placed for collection in the approximate amount of \$243. There is no evidence to show that anything has been done to resolve the debt.

1(e) a debt to a creditor that was charged off in the approximate amount of \$2,254. There is no evidence to show that anything has been done to resolve the debt.

1(f) a debt owed to a creditor placed for collection the approximate amount of \$179. There is no evidence to show that anything has been done to resolve the debt.

1(g) and 1(h) Debts owed to the IRS for back taxes owed for tax year 2011 in the amount of \$8,000, in the amount of \$10,000 for tax year 2012. There is no evidence to show that anything has been done to resolve the debt.

1(i) Applicant failed to file her 2010 and 2011 federal income tax returns in a timely fashion, as required by law. Applicant states that she was unaware that her husband had not been filing their income tax returns on time. There is no evidence to show that these income tax returns have now been filed. (Applicant's Exhibit A.)

1(j) A tax lien was entered against the Applicant in October 2015, by the state in the approximate amount of \$39,849.04. There is no evidence to show that anything has been done to resolve this debt. (Applicant's Exhibit A)

Applicant states that she is currently in discussions with the IRS regarding her debt. She has provided no evidence of any sort concerning these discussions or whether any of her debts have been paid. The record does show that during her bankruptcy filing in 2013, after her expenses, she had \$13,026 in monthly disposable income. In her 2015 bankruptcy filing, Applicant declared that her monthly family income was \$34,024 with monthly average expenses of \$20,014, leaving approximately \$14,010 per monthly in disposable income. (Government Exhibits 5 and 6.)

Applicant owns four properties, and five cars, including three Mercedes and an Audi. She claims that all of them, except one, is over 10 years old. All of the cars except one has over 200,000 miles on them. The newest car is a 2010 and it has over 100,000 miles on it. She states that she is currently working to resolve the financial issues alleged in the SOR, but her husband lost his job on August 1, 2016, and is still unemployed. This has placed additional financial strain on their ability to get the bills paid. (Applicant's Exhibit A.)

Applicant has also vacationed in the Cayman Islands in 2013, Aruba in 2013, Costa Rica in 2014, France in 2015 and in the United Kingdom in 2015 despite the delinquent IRS debt. Applicant explained that her trips were usually paid for with airline miles and hotel points which she accumulated from her husband's business travel. She states that she did not know the delinquent debt existed. (Applicant's Exhibit A.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes five conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant

negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Since 2010, when Applicant lost her job, her husband changed jobs with less pay and became depressed, Applicant has been unable to pay her bills. It is uncertain from the record whether she just could not afford to pay her bills or whether she chose to use the money for other things. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

It is recognized that some of Applicant's circumstances were beyond her control, namely, her job loss, and her husband's depression, and the affects his illness had on his ability to handle household financial matters. However, AG ¶ 20(b) does not provide full mitigation here. Since receiving the SOR, Applicant has done nothing more than mention this situation to the court. There is nothing in the record to show that she has done anything effectively to resolve any of the debt. There is no evidence that she has acted responsibly given these unforeseen difficult circumstances beyond her control, and there are no clear indications that her financial issues are under control. All of the delinquent debts set forth in the SOR remain delinquent. The record fails to establish any mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) through 20(g).

Guideline E, Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant's conduct shows undeniably poor judgment. She has admitted to possessing multiple properties and cars, and taking exotic vacations and even having disposable monies available, rather than paying her delinquent debts, and most importantly her Federal and state taxes. Tax delinquencies pose a special concern because they address how the Applicant deals with her direct responsibilities and obligations to the Government. The fact that her delinquent taxes owed to the IRS and to the state did not preclude her from vacationing is untenable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, none of them were established in this case. She has not taken any position steps to resolve the debt or alleviate her vulnerability to exploitation, manipulation, or duress. She has not provided sufficient evidence to meet her burden of proof with respect to her personal conduct.

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has failed to demonstrate that she has taken reasonable and effective action to resolve the financial issues in the SOR. In fact, to the contrary, she has ignored her debts and taken vacations to exotic places instead of paying her taxes. Her financial problems continue as there is no evidence that they have been resolved. Overall, the

record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She has not met her burden to mitigate the security concerns arising under the guideline for financial considerations and Personal Conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a	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 national security eligibility and a security clearance. National security eligibility is denied.

Darlene Lokey Anderson
Administrative Judge