



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



In the matter of:)
)
) ISCR Case No. 15-08742
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

09/06/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 17, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on August 4, 2016, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on October 12, 2016. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 5. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on August 23, 2017.

Findings of Fact

Applicant admitted all of the allegations in SOR except ¶ 1.t, which she denied. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. She graduated from college in 2004 earning a bachelor's degree. She is not married. She has an 11-year-old child. Except for a short period, she has worked for federal contractors since 2004. She has worked for her present employer since October 2014. She did not disclose any periods of unemployment.²

The SOR alleges 18 delinquent debts totaling approximately \$24,211. Applicant admitted all of the delinquent debts, except SOR ¶ 1.t to which she stated "this account is up to date."³ These debts are supported by credit reports from April 2015, May 2016, and Applicant's admissions.⁴

In September 2015, Applicant was interviewed by a government investigator. During the interview, she told the investigator that her student loans were being paid through a payment plan whereby she pays \$120 a month. She was unaware that her student loans were past due. SOR ¶¶ 1.n through 1.s (\$21,186) are Applicant's student loans that are in collection status. She has not provided documentary proof that these loans are being paid or are in a payment plan.⁵

The debts alleged in SOR ¶¶ 1.c through 1.j and 1.t are medical debts. They range from \$11 to \$475, totaling \$1,186. She was confronted with most of these delinquent debts during her background interview. She told the investigator that she had no idea what the accounts were or when they became delinquent. She subsequently

² Item 2.

³ Item 1.

⁴ Items 4, 5.

⁵ Item 3.

admitted all of these debts in her answer to the SOR. She has not provided evidence that she has resolved any of them.⁶

The debt in SOR ¶ 1.k (\$1,157) is for cell phone service. Applicant was confronted with the delinquent debt during her interview. She stated the phone service was in her name, and it was a shared account. Others were supposed to pay their share and did not. She intended to resolve the debt through a payment plan with the creditor. She did not provide evidence of a payment plan or that the debt is resolved.⁷

The debts in SOR ¶¶ 1.l (\$664) and 1.m (\$555) are both consumer debts. Applicant told the investigator that she believed the debt in SOR ¶ 1.m was a medical debt that she was paying. She admitted owing both debts. She has not provided proof of her actions to pay them.⁸

Applicant failed to timely file her 2013 federal and state income tax returns. She told the investigator in September 2015 that she intended to file the 2013 returns with her next year's tax returns. She believed she owed about \$5,000 for tax year 2013. She was contacted by the IRS about her unfiled 2013 tax returns. In her answer to the SOR, she admitted she failed to file her 2013 federal and state tax returns and failed to pay the taxes owed. She did not provide any information that she filed her tax returns or paid her taxes for 2013 (SOR ¶¶ 1.a and 1.b).⁹

Applicant stated in her answer to the SOR that she has taken care of some SOR items, but did not specify which ones or provide proof to corroborate her statement. She stated she fell behind on bills because she is a single mother and does not receive assistance from anyone. She had kidney stones a few years ago and her child has a medical disorder. The delinquent medical bills belong to her and her child. She plans on addressing her delinquent student loans, but has had difficulty because of other daily expenses. She recently moved in with her family to reduce expenses and pay debts. She was working with a financial adviser and hoped to bring her finances under control. She did not provide a budget or information about her current finances or income.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating

⁶ Items 1, 3.

⁷ Item 3.

⁸ Item 3.

⁹ Item 3.

¹⁰ Item 1.

conditions, which are 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, 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 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. 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. Directive ¶ E3.1.15 states 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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; and
- (g) 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.

Applicant has unresolved delinquent debts that she has been unable or unwilling to resolve. She failed to file 2013 federal and state income tax returns and pay taxes as required. 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, 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; 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.

Applicant admitted all of the delinquent debts alleged, except one. She did not provide evidence that she has paid, resolved, or is paying any of the delinquent debts. She has not filed her 2013 income tax returns or paid taxes due. Applicant's financial problems are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributes her financial problems to being a single mother, not receiving assistance, having kidney stones a few years ago, and her child's medical disorder. Those were circumstances beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She has not provided evidence that she has paid even the smallest debt of \$11. She has been aware of all of these debts since at least September 2015. She failed to provide proof her 2013 federal or state taxes are filed or paid. She disputes one debt, claiming it is up-to-date, but did not provide any proof. She stated she was working with a financial adviser, but there are not clear indications her financial problems are being resolved or under control. The mitigating conditions under AG ¶¶ 20(b), 20(c), 20(d), 20(e), and 20(g) do 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(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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a 35-year-old college graduate. She is a single mother. She has been steadily employed since 2004. She has delinquent medical debts, some that are very small. She has delinquent student loans and consumer debts. She failed to file and pay her 2013 federal and state income taxes. She did not provide evidence that she is paying or resolving any of her delinquent accounts. She does not have a track record of financial stability. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For 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
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Subparagraphs 1.a-1.t:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge