



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



In the matter of:

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) ISCR Case No. 15-08793
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Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Cathryn E. Young, Attorney At Law

July 5, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 11, 2014, Applicant submitted a security clearance application (SF-86). (Government Exhibit 1.) On June 13, 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 and Guideline E, Personal Conduct. 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 June 30, 2016, and requested a hearing before an administrative judge. The case was assigned to me on September 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 9, 2016, scheduling the hearing for January 17, 2017. The hearing was

convened as scheduled. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant's Exhibits A through G. She also testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on January 26, 2017.

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 42 years old. She is unmarried with one child. She has a Master's Degree in Business Management. She is employed with a defense contractor as a Business Analyst. She is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information. The SOR identified one debt totaling approximately \$15,000. Applicant admits the debt. (See Applicant's Answer to SOR.)

Applicant explained that in May 2010, after five years of employment, she suddenly lost her job. She blames a recession for her inability to find work. A year passed, and she was still unable to find employment. During this period, she lived off of her savings, and a credit card. The debt on the credit card grew over the years of unemployment where Applicant could no longer afford the monthly payments. Applicant stopped making payments on the debt. At this point, she was debted to a creditor for a delinquent account in the amount of approximately \$15,104. Credit reports dated December 2, 2014; August 4, 2016; and January 1, 2017, reflect the debt. In December 2014, Applicant found employment. In early 2015, she contacted the creditor to inquire about the debt. The creditor would not accept a payment plan but was willing to settle the debt for about \$6,000. Applicant saved the funds and recently paid the obligation to

the creditor. (Tr. p. 46.) Applicant provided a copy of the letter from the creditor which indicates that the debt has been resolved. (Applicant's Exhibit G.)

Guideline E – Personal Conduct

The Government alleges that the Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), Standard Form 86 dated November 11, 2014. Section 26 asked about her Financial Record, specifically, whether in the past 7 years, has she had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? Applicant responded, "NO." This was a false answer.

Applicant stated that she answered the question on the application incorrectly because she really needed the job, and she did not want the information concerning her debt to have a negative effect on her job. Applicant also admitted that she deliberately lied on is security clearance application to protect her job and because she was embarrassed about it. (Tr. pp. 46 - 47.) She further admitted that he did not realize the harm she was causing by not being truthful. She rationalized to herself that since she had a plan to pay the debt once she got a job, she did not need to reveal it.

Applicant's current financial state is stable. She is current with all of her living expenses and regular monthly obligations. She also has a checking account and two retirement accounts. (Applicant's Exhibit A.) She has set up a budget that she is following in order to maintain future financial stability. (Applicant's Exhibit F.)

Letters of recommendation from her supervisor, coworkers, professional associates and friends indicate that Applicant is a hardworker, who performs her duties with integrity and an excellent attitude. They found her to be honest and ethical. She is well respected and considered trustworthy. (Applicant's Exhibit B.)

Performance Reviews of the Applicant for the period from January 1, 2015, through June 30, 2016 are favorable. (Applicant's Exhibit C.) Applicant was also recognized on the job with a gift certificate from the Performance Recognition Program. (Applicant's Exhibit D.)

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 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 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 access to classified information 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. 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 clearance 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 as to 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. 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.

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

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

Applicant was delinquently indebted in the approximate amount of \$15,000. She lost her job, lived off of her savings and a credit card. When she stopped making payments on her credit card, it became delinquent. Applicant's actions demonstrate both a history of a inability or a unwillingness to satisfy her debt. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating condition under the Financial Considerations are potentially applicable under AG ¶ 20.

- (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 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.

It is recognized that Applicant was laid off from work for 4 years, and was unable to find employment until December 2014. At that point, she contacted the creditor and tried to set up payment arrangements. The creditor wanted only a lump sum settlement amount and so Applicant diligently saved up her money until she could afford to pay the debt. She resolved the debt on June 29, 2016. Given these circumstances, there is evidence that she has acted reasonably and responsibly. Her actions demonstrate reliability, trustworthiness, and good judgment.

Guideline E- Personal Conduct

The security concern for Personal Conduct 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately falsified her security clearance application in response to the question regarding her finances. She did not answer the question truthfully because she was embarrassed and wanted to protect her job. This conduct shows poor judgment, unreliability and untrustworthiness. There are no applicable conditions that could be mitigating under AG ¶ 17.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Personal Conduct security concern.

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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 1, 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge