



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04619

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: Jessica R. K. Dorman, Esq.

06/07/2018

Decision

BENSON, Pamela C., 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 March 29, 2016, Applicant submitted a security clearance application (SCA). On November 6, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 on or after that date.

On March 13, 2018, Applicant, through counsel, responded to the SOR, and she requested a decision based on the written record in lieu of hearing. (Answer) On January 19, 2018, Department Counsel submitted the Government's file of relevant material (FORM). The Government's evidence is identified as Items 1 through 10. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant provided a supplemental response to the FORM, and submitted Applicant Exhibit (AE) A through I. Applicant's counsel did not object to the Government's evidence. Government Exhibits (Items) 1 through 10 are admitted into the record. Department Counsel did not object to AE A-I, which are also admitted into the record. The case was assigned to me on May 2, 2018.

Findings of Fact

Having thoroughly considered the evidence, I make the following findings of fact: Applicant is 44 years old. She has never married and she does not have any children. Applicant received her bachelor's degree in 1997. She received project management certification in 2010. Since June 2000, she has been employed by a federal contractor. In approximately October 2015, she lost her security clearance eligibility. Since July 2017, Applicant is employed by another federal contractor in a different state who is sponsoring her for a security clearance eligibility. (Item 2, Supplemental Response, AE D)

The SOR alleges that Applicant filed Chapter 13 Bankruptcy in February 2014, which was voluntarily dismissed by her in June 2014. (SOR ¶ 1.a.) She is delinquent in the amount of about \$700 for a student loan that has a balance of approximately \$65,000. (SOR ¶ 1.b.) Her car loan account was charged off in the approximate amount of \$24,463, and she owes approximately \$4,368 for another vehicle that has been repossessed. (SOR ¶¶ 1.c and 1.d.) She owes about \$2,000 to a collection agency for two different accounts placed for collection. (SOR ¶¶ 1.e and 1.f.) She owes about \$322 for another account referred for collection. (SOR ¶ 1.g.) An unpaid judgment in the amount of approximately \$6,000 was entered against Applicant in 2016. (SOR ¶ 1.h.) She has a tuition account referred for collection in the approximate amount of \$2,500, and a delinquent account with a balance of about \$1,500. (SOR ¶¶ 1.i and 1.j.) Applicant has a charged-off account with a creditor for an unspecified amount, and a charged-off account with a different creditor in the amount of about \$1,500. (SOR ¶¶ 1.k and 1.l.) She has delinquent property taxes owed to the state in the approximate amount of \$5,500. (SOR ¶ 1.m.) The total amount of delinquent debt alleged in the SOR was approximately \$48,867. Applicant denied all of the SOR allegations in her Answer without additional explanation or providing any supporting documentation. (Item 1)

Applicant encountered economic hardship in late 2006 during the relocation of her employment from one state to another. Applicant was unable to sell or rent her home from the city she moved from and also pay her mortgage in her new location. Her empty residence went into foreclosure. (Item 10)

Applicant experienced financial problems again after she decided to become an entrepreneur for additional income. She purchased run down homes, fixed them up, and she would resell the property for profit. She was successful in this endeavor for a few years until 2012. She had purchased a house and borrowed \$20,000 from the seller to fix up the home. She claimed she then returned the home to the seller pursuant to a verbal agreement. It was understood that her return of the home to the original seller would denote payment in full for the borrowed \$20,000. Once Applicant returned the home to the original seller, he never had the property recorded in his name. (Item 7; Supplemental Response; AE I)

Applicant did not know that the house remained in her name until May 2012, when she was sued by the sewer company for nonpayment. Once she realized that she was liable for all the bills associated with the property, she purchased insurance for the property. She paid the outstanding bills for sewer, water, and the property taxes for the past two years. She made extensive repairs to the home where tenants were residing. She hired an attorney to locate the original seller of the home and she sued him for reimbursement in December 2013. The original seller countersued Applicant. Applicant was advised by legal counsel to file for bankruptcy to secure her remaining assets. She filed a Chapter 13 Bankruptcy in February 2014, with liabilities totaling approximately \$219,377.91. She voluntarily dismissed her bankruptcy case in June 2014 in order to work out payment arrangements with her creditors. (Item 7; Supplemental Response; AE I)

In November 2014, Applicant was interviewed by an authorized DOD investigator as part of her background investigation. Applicant stated she spent \$20,000-\$30,000 from August 2012 to November 2012 for necessary repairs to the house so that she would not be vulnerable to a lawsuit filed by the tenants. The problems included plumbing, bug infestation, a furnace replacement, and repairs to the bathroom, kitchen and windows. She admitted that her wages had been garnished to pay off delinquent accounts. She stated that she was paying \$50 monthly on most of her delinquent accounts. She planned to pay off her delinquent accounts once she received the settlement money offered from her lawsuit with the original seller of the house. (Item 7)

The credit bureau report dated January 2017 (Item 4) support the delinquent debts alleged in the SOR. Applicant claimed that student loans were erroneously reported on the credit report since the recorded history of nonpayment occurred during periods when her deferment or forbearance requests were in process. (SOR ¶ 1.b.) A credit report dated November 2017 (AE C) shows her student loan account has been in forbearance since March 2017.

Applicant purchased a 2013 luxury vehicle in about February 2013 with a loan of approximately \$68,879. (SOR ¶ 1.c.) The vehicle was repossessed. This charged-off account is currently outstanding in the amount of \$24,463. There is no repayment plan in place and the debt is unpaid. (Supplemental Response, AE C)

Applicant is disputing a second vehicle loan that is delinquent in the amount of \$4,368. (SOR ¶ 1.d.) This car was involved in an accident and Applicant claimed the bank was paid in full by her insurance, but the bank was unable to repossess the vehicle. The documentation provided by Applicant did not show that this debt was being disputed or that a legitimate basis of the dispute was being claimed. There is no repayment plan in place and this debt remains outstanding. (Supplemental Response, AE G.)

Applicant has two credit card debts with a collection agency, in the amounts of \$1,478 and \$534. (SOR ¶¶ 1.e and 1.f.) Applicant was able to communicate with the creditors, but she does not have sufficient income to pay this debt. There is no repayment plan in place and these debts remain outstanding. (Supplemental Response)

Applicant took out a personal loan and was unable to pay the balance of \$322. (SOR ¶ 1.g) After the bankruptcy was dismissed, she has been in touch with the creditor, but she is unable to pay on the account due to insufficient income. There is no repayment plan in place and this debt remains outstanding. (Supplemental Response)

SOR ¶ 1.h alleges a judgment filed against Applicant in 2016 in the amount of \$5,948. Applicant claimed the debt alleged in SOR ¶ 1.j is a duplication of this debt. There is a large discrepancy in the amounts owed. AE E showed in December 2017 Applicant paid this account in full.

An unpaid education loan in the amount of \$2,476 was alleged in SOR ¶ 1.i. Applicant claimed her former employer was responsible for this account. She disputed this account and it has been removed from her credit report. Applicant did not provide any supporting documentation of her dispute with this creditor, or a statement from the creditor showing the education loan was fully resolved. An account that “falls off” of a credit report is not sufficient evidence to show that the account was fully resolved. This debt remains outstanding. (Supplemental Response)

The charged-off accounts alleged in SOR ¶¶ 1.k and 1.l have not been resolved. The unpaid property taxes alleged in SOR ¶ 1.m in the amount of \$5,500 were claimed by Applicant to have been paid immediately after she learned of it in 2012. (Supplemental Response; AE I) Applicant’s 2014 bankruptcy petition, however, listed this debt on Schedule D as unpaid property taxes that were incurred from 2009-2013. There is no evidence to show that this account has been paid or resolved. (Item 9)

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 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 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 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
- (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.

Applicant experienced financial difficulties initially in late 2006 when she was making two mortgage payments and her house went into foreclosure. She experienced financial problems again in May 2012 when she learned that she was being sued for unpaid sewer services on a house she thought was no longer her responsibility. She filed for Chapter 13 protection in February 2014, and she voluntarily had the case dismissed in June 2014. The SOR alleged 12 delinquent accounts totaling \$48,876. The above disqualifying conditions apply.

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, and

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

Applicant encountered financial difficulties on more than one occasion. The majority of debts alleged in the SOR remain unresolved or unpaid. She cannot make payment plans with creditors due to insufficient income. Engaging in entrepreneur activities for profit involves risk. Applicant could have followed up to ensure that the deed has correctly changed to the original seller's name, but she chose not do so. She did not act responsibly under the circumstances by filing Chapter 13 bankruptcy and then having the case dismissed four months later. Mitigating conditions AG ¶¶ 20(a) and (b) do not apply.

There is no evidence that Applicant is receiving, or has received, financial counseling from a credible source and there are clear indications that the financial problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Applicant claimed that she does not have sufficient income to repay her creditors. Therefore, she is unable to initiate or adhere to a good-faith effort to repay overdue creditors or otherwise resolve debts. Even the \$322 collection debt (SOR ¶ 1.g) remains unpaid. AG ¶ 20(d) does not apply.

There is no evidence that Applicant has paid or resolved her real estate taxes for \$5,500 as claimed. Applicant stated she immediately paid this debt once she discovered in 2012 that she was still listed on the deed and responsible for the property taxes. She did not provide substantiating documentation to show the debt was paid. The debt was included in Schedule D of her Chapter 13 bankruptcy petition, however, the bankruptcy case was dismissed in June 2014. AG ¶ 20(g) does 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 has been unable or unwilling to satisfy her financial obligations for several years due to problems arising from an entrepreneurial business transaction. She paid \$20,000-\$30,000 between August 2012 and November 2012 for repairs to a house she thought was no longer her responsibility. She then purchased a brand new luxury vehicle in February 2013. Her financial problems are not fully resolved and with her limited resources are likely to continue. The record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraphs 1.c-g: | Against Applicant |
| Subparagraph 1.h: | For Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | For Applicant |
| Subparagraphs 1.k-m: | 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 security to grant Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge