



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07167

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On June 14, 2016, the Department of Defense (DOD) 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 (AGs) effective with the DOD for SORs issued after September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued Security Agent Executive Agent Directive (SEAD) 4, which revised and replaced the 2006 AGs and became effective for all decisions issued on or after June 8, 2017. Accordingly, I have applied the new AGs to this decision.¹

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

Applicant answered the SOR on August 25, 2016, with a four page response, 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) on August 30, 2016. Applicant received the FORM on December 6, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and she provided a response to the FORM comprised of a four-page letter signed December 2, 2016, and 17 attachments marked as Applicant's Exhibits (AE) A through Q, and admitted into evidence. The Government's evidence, identified as Items 1 through 8, is admitted into evidence without objection. The case was assigned to me on August 8, 2017.

Findings of Fact²

Applicant is 57-years old. She obtained her bachelor's degree in 1990. Applicant has been employed as a manager by a federal contractor since 1987. She reports no military service, and she had a previous security clearance in 1989. Applicant married in 1984 and divorced in 1994. Applicant disclosed a number of delinquent medical and credit card debts in section 26 of her Questionnaire for National Security Positions, also known as a security clearance application (SCA) that she signed on December 16, 2014.³ Applicant stated that she had a number of "debt situations that have been magnified by health concerns and hospitalizations." She was hospitalized five times during the last three years for a severe health condition. She was most recently hospitalized in November 2014.

Applicant stated in her SCA that she made six monthly payments of \$650 in 2012 to a credit assistance company, which was supposed to distribute this money to three major creditors. (SOR ¶¶ 1.d and 1.e and one other) She was also making periodic payments on her delinquent medical bills and paying \$300 per month to the IRS for back taxes owed. Applicant's financial problems began in 2012 when she cashed-out her retirement account, and received only \$20,000 after paying taxes.⁴ In her clearance interview in June 2015, she stated that she received a letter from the IRS in 2013 informing her that she owed \$9,000 in taxes after making an early withdrawal from her retirement account. Applicant mailed \$2,000 to the IRS immediately and then she started making payments of \$300 per month with the final payment made in July 2015. She stopped making the \$650 monthly payments to the credit assistance company because that company was not allocating her money to the original creditors. She expects to have all of her delinquent debts paid off by the end of 2017.

² Unless stated otherwise, the source of the information in this section is Applicant's December 16, 2014 SCA. (Item 3) and the summary of her clearance interview on September 16, 2015. (Item 4)

³ Item 3.

⁴ Item 4.

In her Answer to the SOR, Applicant effectively admitted all of the allegations in the SOR of delinquent debts totaling approximately \$67,193, with explanations. She erroneously proclaimed that SOR ¶¶ 1.a, 1.c, and 1.e, are barred by the statute of limitations. This has little or no relevance in a security clearance action. Applicant also explained that after 30 years of excellent credit, her credit reports became riddled with delinquent medical debts and disputes in 2008. She was prescribed aqua-therapy for her diagnosed medical condition, and she used credit cards to pay approximately \$25,000 for swim spa handicap accommodations at her home. However the swim spa company went out of business around the same time that Applicant was being admitted to the critical care unit (CCU) about three times a year due to side effects and infections from her new drug protocol – for five years ending in 2015.

In her response to the FORM, Applicant explained that her credit history followed her health in a downward spiral after she was diagnosed with a serious medical condition approximately ten years ago. She has now signed up for a monthly credit report service so that she can monitor her credit, and she has been systematically contacting her creditors. Applicant has reached a level of homeostasis with her condition and need for home nurse visits. So, she has been able to pay down many of her medical debts.

SOR ¶ 1.a (\$18,821) arose from a charged-off credit card debt. Applicant has now reached out to the creditor and she is making progress on a payment plan to settle this delinquent debt. SOR ¶ 1.b (\$13,080) was a collection account that Applicant has disputed. She has provided evidence that she recently entered into an agreement to make payments of \$338 per month until September 2017 to resolve this debt. She has also reached out to the creditor in SOR ¶ 1.c (\$12,491) and provided evidence that his debt has been paid in full. Her credit reports reflect a low balance on the charged-off debt at SOR ¶ 1.d (\$11,360) as Applicant has been making payments pursuant to a garnishment order. As of December 2016, she had paid \$10,356 on this debt. Her credit reports reflect a zero balance on the debt alleged at SOR ¶ 1.e as this credit-card debt has been paid off. Applicant is making payments to address the costs not covered by health insurance, from her frequent CCU admissions that are reflected in SOR ¶¶ 1.f, 1.g, and 1.h. Lastly, the petty delinquencies alleged in SOR ¶¶ 1.i (\$65) and 1.j (\$43) have been paid off.

Applicant has enrolled in a financial-wellness credit-counseling program and she is adhering to a budget. She provided medical records to substantiate her diagnosis and seven character reference letters, including one from her pastor, which attest to her honesty and work ethic. I am satisfied that Applicant now has either paid off her alleged delinquencies, or she has a plan in place to do so, and she is making progress. She is committed to resolve any remaining delinquent debts by June 2018.

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 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. Under 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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 admitted to most of the delinquent debts alleged in the SOR, with explanations. They are also confirmed by her credit reports. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁵

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 problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, a clear victimization by predatory lending practices, or identity theft) and the individual acted responsibly under the circumstances;

⁵ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(c) the person has received, or is receiving 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

(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.

Applicant endured a debilitating medical condition and commensurate medical expenses related to multiple hospitalizations. These conditions were beyond her control. She has demonstrated that she acted responsibly under the circumstances, including by settling many of the alleged delinquencies and disputing a few. She is adhering to a good-faith repayment plan on others. Applicant has made concerted efforts to resolve the delinquent medical debts and charged-off credit card debts. I am confident that she will continue her efforts to resolve any delinquencies. Applicant has met her burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances unlikely to recur. The mitigating conditions enumerated above 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.

Applicant's self-disclosed, charged-off credit card debts, and delinquent medical debts, are no longer a security concern. There is sufficient evidence to conclude that Applicant's financial problems are under control. She has met her burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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:	FOR APPLICANT
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Subparagraphs 1.a – 1.j:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Robert J. Kilmartin
Administrative Judge