



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



In the matter of:)
)
-----) ISCR Case: 15-08892
)
Applicant for Security Clearance)

Appearances

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

October 20, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant owes approximately \$32,000 in delinquent debts that she has not repaid or otherwise resolved. Applicant did not show that her financial difficulties are under control. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On August 13, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 2.) On April 28, 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 June 1, 2016, and requested that her case be decided by an administrative judge on the written record without a hearing (Answer). (Item 1.) On June 27, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items,¹ was mailed to Applicant, and received by her on July 14, 2016. The FORM 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 did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period she was afforded. The case was assigned to me on May 10, 2017. Items 1 through 3 are admitted into the record.

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* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions² 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 in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility, and eligibility to hold a security clearance. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

Findings of Fact

Applicant is 44 years old and unmarried. Applicant has one child. She has worked for a Federal contractor since October 2014. Applicant was unemployed from April 2013 through April 2014. (Item 2.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

¹ Department Counsel submitted four Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on September 28, 2015. Applicant did not adopt the summary as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, Report of Investigation summaries are inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

² SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

In her Answer, Applicant admitted the existence of the debts set forth in all of the allegations in the SOR, with explanations. (Item 2.) The debts are documented in the credit bureau report in the record dated August 29, 2015. (Item 3.)

The status of the debts is as follows:

1.a. Applicant admitted owing a medical creditor \$18 for a past-due debt. She stated in her Answer, "This was once on my credit report, but now it was either paid or over 7 [years] old and was removed." No further information was provided. This debt is not resolved.

1.b. Applicant admitted owing \$175 to a creditor for a past-due debt. She stated in her Answer, "This was once on my credit report, but now it was either paid or over 7 [years] old and was removed." No other information was provided. This debt is not resolved.

1.c. Applicant admitted owing \$495 to a creditor for a past-due debt. She stated in her Answer, "This was once on my credit report, but now it was either paid or over 7 [years] old and was removed." No other information was provided. This debt is not resolved.

1.d. Applicant admitted owing \$199 to a medical creditor for a past-due debt. She stated in her Answer, "This is a medical bill from 6/6/11, and I was laid off at the time and I thought my insurance carrier had paid it before my coverage ended." No other information was provided. This debt is not resolved.

1.e. Applicant admitted owing \$12,997 to a creditor for a past-due debt. She states that this debt is the same as the ones set forth in allegations 1.f, and 1.g. The account number and the amount of the debt is the same for this allegation and 1.f. They are for an unpaid student loan. (Item 3 at 10.) I find that 1.e and 1.f are the same debt. As further discussed below, 1.g is a different debt to a different creditor. No other information was provided. This debt is not resolved.

1.f. Applicant admitted owing \$12,997 to a creditor for a past-due debt. As stated, I find that this debt is the same as that set forth in 1.e, above. Because it refers to a duplicate debt, this allegation is found for Applicant.

1.g. Applicant admitted owing \$8,686 to a creditor for a past-due debt. As stated, this is not the same debt as that discussed under 1.e and 1.f, above. Applicant stated in her e-QIP that this debt is for a repossessed automobile. She also stated, "When I was unemployed I got behind in all of my bills." (Item 2 at Section 26.) The credit report in the record states that this is a "charged-off" account. (Item 3 at 12.) No other information was provided. This debt is not resolved.

1.h. Applicant admitted owing a creditor \$118 for a past-due debt. She stated in her Answer, "This was once on my credit report, but now it was either paid or over 7 [years] old and was removed." No further information was provided. The debt is not resolved.

1.i. Applicant admitted owing \$115 for a past-due medical debt. She stated in her Answer, "I'm planning on paying this balance off by setting up payment arrangements with the creditor." No further information was provided. This debt is not resolved.

1.j. Applicant admitted owing \$8,020 for a past-due debt involving a second repossessed automobile. She stated in her e-QIP that she was going to contact this creditor. (Item 2 at Section 26.) She further stated in her Answer, "I'm planning on paying this balance off by setting up payment arrangements with the creditor." No further information was provided. This debt is not resolved.

1.k. Applicant admitted owing \$1,554 to a telephone provider for a past-due debt. She stated in her Answer, "I'm planning on paying this balance off by setting up payment arrangements with the creditor." No further information was provided. This debt is not resolved.

With regard to her debts in general Applicant stated in her Answer, "I'm looking for a bankruptcy attorney to see if filing for a Chapter 13 bankruptcy would be the best thing for me to do." She submitted no information showing that she had retained bankruptcy counsel. Applicant did not submit any documentation that she has participated in credit counseling or budget education. Applicant did not submit any information concerning her current income, expenses, or ability to pay her past-due debts and be financially secure going forward. She provided no evidence concerning the quality of her job performance. She submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate her credibility, demeanor, or character in person since she elected to have her case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, 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, “Any 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, “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, and has the ultimate burden of persuasion as to obtaining 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 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, “Any 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* Executive Order 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 personal 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 two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has been employed since 2014. She has a considerable number of past-due debts that she has not resolved. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four 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, or 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant continues to owe past-due commercial debt to various creditors in the amount of approximately \$32,377. Applicant elected not to provide any evidence that her situation has improved. Therefore, there is no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant was unemployed for about a year between April 2013 and April 2014. She did not show how she had acted responsibly to resolve her debts after obtaining employment again. Mitigation is not established under AG ¶ 20(b).

No evidence of financial counseling from a legitimate and credible source or budget information establishing solvency going forward was provided. Further, there are no clear indications that Applicant's financial problems are under control. Applicant elected to submit no information showing that she had paid or resolved any of her debts, including the smallest ones. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Applicant did not mitigate her delinquent debt issues. As stated above, SOR allegation 1.f is found for Applicant because it is a duplicate debt. With that exception, Guideline F is found against Applicant.

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 national security 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 continues to owe more than \$32,000 in bad debts, and did not show any plan for resolving that substantial indebtedness or otherwise showing that such issues will not recur in the future. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She failed to meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

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 |
|---------------------------|-------------------|
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | 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. Eligibility for access to classified information is denied.

Wilford H. Ross
Administrative Judge