



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 16-00342
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Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 8, 2015. On June 14, 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. The DOD CAF acted 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) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.¹

¹ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either version.

Applicant answered the SOR on July 12, 2016, admitting all of the SOR allegations with explanations and electing 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 May 3, 2017. Applicant received the FORM on May 14, 2017, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided no response to the FORM. The Government's evidence, identified as Items 1 through 7, is admitted without objection. The case was assigned to me on October 1, 2017.

Findings of Fact²

Applicant is 34 years old. She graduated from high school in 2001 and took some college courses but did not obtain a degree. She has been employed in janitorial services for a federal contractor since February 2014. Applicant reports no military service and she has never married. She was unemployed from March 2010 to February 2013. Then, she was employed from February to September 2013, and unemployed from September 2013 to February 2014. She is applying for a security clearance for the first time.

Applicant's admissions to all eight allegations of delinquent debts contained in the SOR, as well as her admission to failure to timely file federal income tax returns for 2014, are adopted as findings of fact. Five of the SOR allegations are for delinquent student loans owed to the U.S. Department of Education, totaling \$49,476 of the \$50,536 total. In her Answer, she stated that she is trying to enroll in a student-loan-forgiveness program to resolve these debts at SOR ¶¶ 1.a. – 1.c; 1.g and 1.h. Applicant explained that she would attempt to set a payment plan to pay the delinquent debts alleged at SOR ¶¶ 1.d (personal loan) and 1.e. She indicated that she never received the medical bill in SOR ¶ 1.f, but she did admit going to the doctor, and owing this medical bill.

Applicant denied the allegation of failure to timely file her federal income tax return for 2008 because she never received a W-2 for that tax year. Her SCA indicates that she was employed throughout 2008. She concedes that she does owe \$4,000 in back taxes for that tax year. She did admit to the SOR ¶ 1.i allegation of failure to file her federal income tax return for 2014 because she asked for an extension to file late but never did. At the time of her July 2016 Answer, she promised to resolve the issue. She provided no documentary evidence to show that she reached out to the IRS or her creditors, or established a payment plan, or filed her overdue income tax returns.

In her October 2015 clearance interview, Applicant disclosed that she had been diagnosed with a disabling illness and moved in with her parents. She pays no rent

² Unless stated otherwise, the source of the information in this section is Applicant's April 8, 2015 security clearance application (SCA) and the summary of her security clearance interview on October 29, 2015.

currently and earns \$9.00 per hour at her job. Otherwise, she provided no explanation about how she fell behind on her student loans. She provided no information about her other charged-off debts, her delinquent medical bill, or whether she disputed, compromised, settled or otherwise resolved them. The eight SOR debts total approximately \$50,536. She provided no documentary evidence to show any progress on these debts; that she obtained credit or debt-consolidation counseling, or that she has a budget.

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, 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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, Appendix A, ¶ 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.

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.”

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;
- (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’s SOR debts are confirmed by her credit reports, clearance interview, and answer to the SOR. 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.³ The Government also produced substantial evidence to support the disqualifying condition at AG ¶ 19(f), at least with respect to the 2014 income tax return. Applicant has not met her burden.

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 . . . , and the individual acted responsibly under the circumstances;

(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 in compliance with those arrangements.

Applicant has longstanding financial problems that are ongoing and recent. She endured a long period of unemployment from early 2010 to approximately early 2014, with the exception of a nine-month period during 2013. She also has a recently diagnosed medical problem but apparently she is still able to work. She provided no other explanation for her inability or unwillingness to pay her delinquent debts. Arguably, her illness and unemployment were due to conditions that were beyond her control. Nevertheless, she has not produced relevant and responsive documentation, demonstrating that she acted responsibly under the circumstances. Applicant has not met her burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances making them unlikely to recur. The eight delinquent SOR debts have not been resolved. She provided no information that her 2008 or 2014 federal income tax returns have yet been filed. None of 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

³ 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).

conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG, Appendix A, ¶ 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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Most importantly, Applicant has not addressed the specific allegations in the SOR and has not met her burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge