



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



In the matter of:)
)
) ISCR Case: 16-00528
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

October 25, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On December 19, 2014, Applicant submitted a security clearance application (SF-86). On June 24, 2016, 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 (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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on August 2, 2016. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On November 4, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 10 Items, were received by Applicant on November 10, 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 failed to respond to the FORM. DOHA assigned the case to me on October 1, 2017. Items 1 through 10 are admitted into evidence and going forward are referenced as Government Exhibits 1 through 10.

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 36 years old, and is in a second marriage with five children. She is currently attending college. She is employed as a Publication Coordinator 2 for a defense contractor. She is seeking to obtain a security clearance in connection with her employment.

The SOR alleges that Applicant failed to file her state income tax returns for tax years 2012 and 2013; and that she has five delinquent debts totaling approximately \$6,144. Applicant admits each of the allegations set in the SOR with some explanations, except 1.e., which she denies. Applicant has never held a DoD security clearance.

Applicant explained that she has worked for a defense contractor since October 2014. Her position was initially a part-time position that became full time. Prior to this employment, she was unemployed from October 2003 through January 2005 and from January 2010 through January 2013. When she was employed, she worked as a substitute teacher. Applicant was married to her first husband from October 2000 to September 2004. She remarried in April 2005, and indicates that she and her second husband are planning on separating in August 2015.

1.a. Applicant stated that she did not file her state income tax returns for tax years 2012 and 2013 because she was unemployed during those years. (Government Exhibit 2.) During her personal subject interview in June 2015, she stated that she and her spouse were filing together and the two knew that they would owe money, so they did not file. (Government Exhibit 4.) In January 2014, Applicant was contacted by the

state taxing authorities and informed that she owed approximately \$2,400 in back taxes for 2012 and 2013. Applicant claimed that she contacted them and arranged for a \$50.00 per month payment plan. (Government Exhibit 4.) However, in her Response to Interrogatories in October 2015, she was asked to provide a copy of her tax payment account transcripts for tax years 2012 and 2014. Applicant initially stated that she had not received them, but expected them to be mailed to her within four to six weeks. In her Response to Interrogatories in December 2015, when asked to provide the same tax payment transcripts for tax years 2012 and 2014 she stated that there is no such tax documentation because the returns have not yet been filed. (Government Exhibit 6.) Applicant now states that her husband has made arrangements to pay the debt. (Government Exhibit 2.)

1.b. A delinquent medical account was placed for collection in the approximate amount of \$232. The debt is reflected as owing on the Applicant's credit report dated June 17, 2016. Applicant claims that she has set up arrangements to pay the debt. (Government Exhibit 2.) She did not provide documentation to support her claim.

1.c. A delinquent debt for unpaid personal property taxes was garnished from Applicant's payroll account beginning in May 2015 in the approximate amount of \$560.62. (Government Exhibit 9.) Applicant states that her husband was wrongfully discharged from his job and they could not afford to pay the property taxes.¹ Applicant now claims that she has set up payment arrangements to pay the debt. (Government Exhibit 2.)

1.d. A judgment was filed against you in 2015 by a hospital in the approximate amount of \$1,049. The debt remains owing. (Government Exhibit 10.) Applicant claims that she is preparing an arrangement to pay the debt. (Government Exhibit 2.)

1.e. A delinquent debt owed to a creditor for a payday loan, was placed for collection in the amount of approximately \$152. Applicant denies this debt and claims that it has been paid. (Government Exhibit 2.) The debt is reflected as owing in Applicant's credit report of January 2015. (Government Exhibit 7.)

1.f. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$4,151. Applicant explained that this debt is for classes she took at college, but which she was unable to finish because her father passed away in November 2014. (Government Exhibits 4 and 6.) Applicant also claims in her October 2015 Response to Interrogatories that she had arranged to make monthly payments of \$256, which were to start on October 2015. However, because she was returning to complete her college degree she would require additional student loans and the amount would be financed with new loans. (Government Exhibit 5.) In her December 2015 Response to Interrogatories, there are no payments reflected as having been made to the creditor by Applicant to satisfy this debt. (Government Exhibit 6.) In addition, the

¹ Applicant does not specify the date that her husband lost his job. (See Government Exhibit 2.)

debt is reflected as owing in Applicant's credit report dated January 2015. (Government Exhibit 7.)

In summation, Applicant has provided no documentary evidence to show that she has paid anything toward any of her outstanding debts. Applicant attributes her financial problems to her lack of income stemming from her period of part-time employment, unemployment, her husband's wrongful discharge, and her father's passing.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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. 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, an "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 applying for national security eligibility seeks to enter 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, “[a]ny 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 *a/so* EO 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 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.

AG ¶ 19 describes five conditions that could raise security concerns and may be disqualifying in this case:

- (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;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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 has not paid her delinquent debts. It is uncertain from the record whether she could not afford to pay her bills or whether she chose to use the money for other things. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes several 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, 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;

(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;

(f) the affluence resulted from a legal source of income; 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.

It is recognized that circumstances beyond her control, namely, her periods of underemployment and unemployment, her husband's wrongful discharge from his job, and her father's death adversely affected her finances. However, AG ¶ 20(b) does not

provide full mitigation here. Since receiving the SOR, Applicant has claimed that she had set up payment arrangements to pay the debts, but has done nothing more. She has provided no documentation to demonstrate that she has acted responsibly under her circumstances, nor has she received or is receiving counseling, and there are no clear indications that her financial problems are being resolved or are under control, or that she has initiated a good-faith effort to repay or otherwise resolve her debts. There is nothing in the record to show that she has done anything effectively to resolve any of the debt. All of the delinquent debts set forth in the SOR remain delinquent. The record fails to establish any mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) through 20(g).

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 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 is a mature adult, who has failed to demonstrate that she has taken reasonable and effective action to resolve the financial issues in the SOR. Her financial problems continue as there is no evidence that they have been resolved. Overall, the record evidence leaves me with serious doubts as to Applicant's judgment, eligibility, and suitability for a security clearance. She has not met 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
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	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. National security eligibility is denied.

Darlene Lokey Anderson
Administrative Judge