



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



In the matter of:

ISCR Case No. 16-01122

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

August 20, 2018

Decision

MOGUL, Martin H., Administrative Judge:

Statement of the Case

On July 5, 2016, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ (Item 1.) The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility.

On August 29, 2016, Applicant submitted a written reply to the (RSOR), and she requested that her case be decided on the written record in lieu of a hearing. (Item 1.) On September 20, 2016, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered five documentary exhibits. (Items 1-5.) Applicant

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines, effective September 1, 2006.

was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 29, 2016. Applicant submitted no additional evidence. The case was assigned to this Administrative Judge on July 11, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

After a thorough and careful review of the pleadings, and exhibits, I make the following findings of fact.

Applicant is 49 years old, and is a high school graduate. She is divorced, but was married from 1989 to 2012. She has one child. Applicant seeks a DoD security clearance in connection with her employment in the defense sector. (Item 2.)

Guideline F, Financial Considerations

The SOR lists 13 allegations (1.a. through 1.m.) regarding financial difficulties, specifically 12 overdue debts, and an allegation of a filed bankruptcy, under Adjudicative Guideline F. The delinquent debts total more than \$14,000.

Applicant admitted all of the 12 SOR debts. (Item 1.) They were also established by Item 4. Applicant also admitted SOR allegation 1.f., that she filed a Chapter 13 Bankruptcy in 2013, and it was dismissed in 2014. Her bankruptcy was also proven by Item 5.

Applicant's Electronic Questionnaire for Investigations Processing (e-QIP) shows that she was unemployed from June 2013 through August 2014, and from January 2011 through February 2011. (Items 2.) On Item 3, Applicant explained that she has had financial issues since at least the year 2000, as a result of medical complications from high blood pressure, Bell's palsy, and sleep apnea. However, no evidence has been introduced to establish that any of Applicant's debts have been resolved or reduced. Finally, Applicant provided no information as to what steps she has taken or plans to take to resolve her delinquent debts.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 to be 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, administrative judges apply the guidelines 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. According to AG ¶ 2(a), 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 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.

Under Directive ¶ E3.1.14, the Government must 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 applies for access to classified information 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 access to classified information. 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 information.

Section 7 of Executive Order (EO) 10865 provides that adverse 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 relating to the guideline 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.

Applicant had many delinquent debts for several years. No independent evidence was introduced to establish that any of her significant SOR-listed overdue debts have been reduced or resolved, and there has been no evidence introduced to establish that Applicant will be able to be more responsible in resolving her debts in the future.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The evidence is sufficient to raise disqualifying conditions (a) and (c) as applicable 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;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust;
- (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;
- (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;
- (g) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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.

While Applicant contends that her periods of unemployment and her ill health contributed to her delinquent indebtedness, no evidence has been introduced to establish that Applicant has acted responsibly to attempt to resolve or reduce any of these debts, is current with her recent debt, or will be able to live within her means in the future. I do not find that mitigation under AG ¶ 20 has been established.

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.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a.-1.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 interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge