



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 16-01337

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel

For Applicant: *Pro se*

05/17/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On October 18, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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* (AG), effective within the DOD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

Applicant answered the SOR on February 6, 2017, and requested that her case be decided by an administrative judge on the written record without a hearing (Answer). On March 2, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant and received by her on March 21, 2017. 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 a response to the FORM or object to the Government's Items. Items 1 through 6 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 1, 2017.

Findings of Fact

Applicant is 33 years old and single. She attended college, but did not complete a degree. Since December 2014, she has worked for a defense contractor. Prior to this position, she worked in private industry from October 2013 to November 2014. She worked for another federal contractor from March 2012 to March 2013. She served on active duty from April 2004 to May 2009, when she was honorably discharged as an E-5 for a medical condition. (Item 3) She was unemployed from March 2013 to October 2013, and from May 2009 to March 2012. (Item 3)

On March 16, 2015, Applicant submitted a security clearance application (SCA). In it, she disclosed one \$1,500 delinquent debt, but failed to disclose a 2013 automobile repossession, judgments filed in 2009, 2010, and 2012, and a 2013 delinquent student loan. During a June 26, 2015 interview with a government investigator, Applicant stated that she reviewed her credit report in December 2014, which was the reason she disclosed the one delinquent debt. She said she never received notice of the judgments. She said she did not recall having an account with the collection agency representing the student loan. She attributed her financial problems to periods of unemployment. (Item 1, Item 4)

In her Answer to the two SOR personal conduct allegations, which claimed that she deliberately failed to disclose requested financial delinquencies, Applicant wrote "admit" after each allegation. She did not offer any additional explanations. (Item 2)

Based on credit bureau reports (CBR) from March 2016 and March 2015, the SOR alleged 17 debts that became delinquent between 2010 and 2015, and totaled over \$23,000. They included student loans, credit cards, medical debts, an automobile repossession, and a garnishment for a defaulted student loan. (Item 5, Item 6)

In her February 2017 Answer, Applicant submitted proof that she paid the two delinquent student loans, alleged in SOR ¶¶ 1.b and 1.c. (Item 2) She did not provide evidence that she resolved any of the other debts. There is no evidence that Applicant participated in financial or credit counseling. (Item 4) She did not provide a budget or

other information related to her financial obligations from which to determine her current financial reliability.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines 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.

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 three 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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of being unable or unwilling to meet financial obligations, which began in 2010 and continued into 2015. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. The following four 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 (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's delinquent debts arose between 2010 and 2015, and all but two of them continue to be unresolved. AG ¶ 20 (a) does not apply. Applicant attributed her financial problems to two periods of unemployment, which may have been circumstances beyond her control. She did not provide evidence that she has attempted to responsibly manage her financial obligations; thus, AG ¶ 20(b) provides limited mitigation. There is no evidence that she participated in credit or financial counseling, or that her delinquent debts are being resolved and under control. AG ¶ 20(c) does not apply. She provided evidence that the debts alleged in SOR ¶¶ 1.b and 1.c. are paid. She established mitigation under AG ¶ 20(d) for those debts.

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. One may be potentially disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant formally admitted, in her Answer, the two personal conduct allegations that asserted she deliberately failed to disclose requested financial information. She provided no amplifying information for her admission that would explain or justify this conduct. The evidence established the above disqualifying condition.

AG ¶ 17 provides conditions that could mitigate security concerns. Five are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The record does not contain evidence to establish any of the above mitigating conditions.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 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. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature individual who honorably served in the military for five years. She subsequently worked as a civilian for a defense contractor. In the FORM, she was informed that the evidence she submitted in response to the SOR was insufficient to mitigate the financial and personal conduct allegations. Despite that notice, she did not provide additional evidence that she was resolving the delinquent debts or submit an explanation addressing the allegations that she withheld information from the Government. The absence of mitigating evidence on these allegations compels a finding that she failed to meet her burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

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
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Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraphs 1.d through 1.q:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraphs 2.a and 2.b:	Against Applicant
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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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge