



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 16-01679

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro se*

December 7, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Applicant incurred approximately \$10,000 in delinquent debts, the majority of which 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 October 5, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On June 8, 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 July 7, 2016, and requested that her case be decided by an administrative judge on the written record without a hearing (Answer). (Item 2.) On September 15, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items,¹ was mailed to Applicant, and received by her on October 12, 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 August 9, 2017.

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.

Amendment of SOR

In the FORM Department Counsel proposed to amend the SOR in several ways. Department Counsel indicates that the authority for her proposed amendments is ¶ E3.1.13 of the Directive. That paragraph does not deal with amendments to the SOR. Amendments to the SOR are governed by ¶ E3.1.17 of the Directive, which states:

The SOR may be amended at the *hearing* by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for

¹ Department Counsel submitted eight 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 March 14, 2016. Applicant did not adopt the summary as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is 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."

other good cause. When such amendments are made, the Administrative Judge may grant either party's request for such additional time as the Administrative Judge may deem appropriate for further preparation or for other good cause. (Emphasis supplied.)

Even though not specifically covered, I shall consider the proposed amendments pursuant to ¶ E3.1.10 of the Directive, which states, "The Administrative Judge may rule on questions on procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner." As a general matter, it is noted that Applicant did not respond to the FORM.

First, Department Counsel proposed to amend the allegation in subparagraph 1.h by changing the amount owed by the Applicant from \$175 to \$293. This proposed amendment would be more appropriate as a proposed finding of fact. As further described below, I find use of a FORM to amend the SOR in this way is not appropriate. This motion is denied.

Second, Department Counsel withdrew subparagraphs 1.k through 1.p. Such an action is appropriate under ¶ E3.1.6 of the Directive. That motion is granted.

Third, Department Counsel proposed to amend the SOR by adding new subparagraphs 1.aa through 1.pp. As stated, Applicant chose not to respond to the FORM in general, or to the proposed amendments in particular. Concerning the contents of the FORM, ¶ E3.1.7 of the Directive states, "Department Counsel shall provide applicant with a copy of all relevant and material information that could be adduced at a hearing." Proposed substantial amendments to the SOR are not contained within this ambit. In addition, the proposed amendments in the FORM did not give the Applicant an opportunity to request a hearing, additional time for preparation of exhibits, nor did it inform her that failure to respond to the proposed amendments might result in her case being closed, as provided for under ¶¶ E3.1.4, E3.1.5, and E3.1.17. Department Counsel could have served on Applicant a properly formatted amended SOR, or withdrawn the original SOR and issued a new one. The motion to amend the SOR by adding allegations 1.aa through 1.pp is denied as I deem it inappropriate under ¶ E3.1.10 of the Directive.

Findings of Fact

Applicant is 53 years old and divorced from her third husband. Applicant received a bachelor's degree in 2007. She has been working for her present employer since July 2015. She was unemployed between August 2014 and July 2015 (Item 3.)

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.

In her Answer, Applicant admitted all the original SOR allegations except 1.e, 1.r, 1.t, 1.u, and 1.v, with explanations. Those admissions are findings of fact. (Item 2.) As stated, Department Counsel withdrew allegations 1.k through 1.p. All of the alleged debts are documented in one or both of the credit bureau reports in the record dated October 27, 2015; and September 13, 2016 (Items 5 and 6); or confirmed by admissions in Applicant's e-QIP (Item 3 at Section 26).

Applicant stated in her Answer that her divorce left her with substantial debt to repay. She had to take care of a daughter with a chronic health condition, and was also unemployed for a time. Applicant also stated that she had established payment arrangements with some of the creditors, as further described below.

The status of the debts is as follows:

1.a. Applicant admitted owing \$1,238 to a creditor for a past-due department store debt. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.b. Applicant admitted owing \$1,060 for a past-due bill. Applicant further stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.c. Applicant admitted owing a credit union \$969 for a charged-off account. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.d. Applicant admitted owing a creditor \$687 for a past-due bill. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.e. Applicant denied owing a creditor \$659 for a past-due account. Applicant also stated in her Answer that she was in a payment arrangement with this creditor. The most recent credit report in the record (Item 6) confirms the existence of this debt, and does not show a payment arrangement or settlement. No other information was provided. This debt is not resolved.

1.f. Applicant admitted owing a creditor \$549 for a past-due account. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.g. Applicant admitted owing a creditor \$450 for a past-due account. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.h. Applicant admitted owing a creditor \$175 for a past-due account. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.i. Applicant admitted owing a creditor \$240 for a past-due account. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.j. Applicant admitted owing a creditor \$224 for a past-due account. Applicant stated in her Answer that she had paid this debt in full. The most recent credit report in the record (Item 6) supports this statement, by saying the account is “paid charge off.” This debt is resolved.

1.k through 1.p. Withdrawn by Department Counsel.

1.q. Applicant admitted owing a creditor \$1,885 for a past-due account. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.r. Applicant denied owing a creditor \$1,812 for a past-due mobile telephone bill. This debt is reflected on Item 6, which also states that Applicant is disputing the account information. Given the state of the record, the Government has not sufficiently shown that Applicant is currently delinquent on this bill. This allegation is found for Applicant.

1.s. Applicant admitted owing a creditor \$1,082 for a past-due account. Applicant stated in her Answer that she was in a payment arrangement with this creditor. No other information was provided. This debt is not resolved.

1.t. Applicant denied owing a creditor \$1,081 for a past-due bill. This debt is reflected on Item 6, which also states that Applicant is disputing the account information after resolution. Given the state of the record, the Government has not sufficiently shown that Applicant is currently delinquent on this bill. This allegation is found for Applicant.

1.u. Applicant denied owing a creditor \$712 for a past-due bill. This debt is reflected on Item 6, which also states that Applicant is disputing the account information after resolution. Given the state of the record, the Government has not sufficiently shown that Applicant is currently delinquent on this bill. This allegation is found for Applicant.

1.v. Applicant denied owing a creditor \$628 for a past-due student loan. She further states that she has a payment arrangement for this account. This debt is reflected on Item 5, which also states that Applicant is disputing the account. Given the state of the record,

the Government has not sufficiently shown that Applicant is currently delinquent on this bill. This allegation is found for Applicant.

1.w. Applicant admitted owing \$505 to a creditor for a past-due account. She further stated in her Answer that this was a duplicate of the creditor in allegation 1.p, which was withdrawn. Applicant further stated that she had a payment arrangement with this creditor. No further information was provided. This debt is not resolved.

1.x. Applicant admitted owing a creditor \$343 for a past-due account. She further stated in her Answer that this debt had been paid in full. Item 5 shows this debt to be disputed by Applicant. This debt does not appear on Item 6. Given the state of the record, the Government has not sufficiently shown that Applicant is currently delinquent on this bill. This allegation is found for Applicant.

1.y. Applicant admitted owing a creditor \$296 for a past-due account. She further stated that she had a payment arrangement with this creditor. No further information was provided. This debt is not resolved.

1.z. Applicant admitted owing a creditor \$131 for a past-due utility bill. She further stated that she had paid this debt in full. The two credit reports in the record do not show this debt as being paid. No further information was provided. This debt is not resolved.

Applicant did not submit any documentation that she has participated in credit counseling or budget education. She 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 reference letters 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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to pay debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has been continuously employed since 2015. She has a considerable number of past-due debts that she cannot, or will not, resolve. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

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

Applicant continues to owe past-due commercial debt in the amount of approximately \$10,000. She offered no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that some of her debt problems were caused by her divorce, a move, and taking care of her daughter. However, Applicant provided no information as to how she has been responsibly handling her debt since 2015. Mitigation was 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 stated in her Answer that she had paid some debts in full, and had payment arrangements for others. However, she elected not to respond to the FORM and provided no documentary evidence to support payments to any of the alleged creditors. As stated, the Government's credit reports state that the debt in allegation 1.j was paid. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Applicant indicated in her Answer that she disputed some of the debts, which is in accordance with AG ¶ 20(e). The disputes were documented in the credit reports in the record. The Government did not provide sufficient evidence to support several of the allegations that were disputed, and they are found for Applicant.

Applicant did not sufficiently mitigate all of her delinquent debt issues. As stated above, SOR allegations 1.j, 1.r, 1.t, 1.u, 1.v, and 1.x are found for Applicant. With those exceptions, 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 about \$10,000 in bad debts, and did not show any plan for resolving that substantial indebtedness. 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
Subparagraphs 1.a through 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k through 1.p:	Withdrawn
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraphs 1.t. through 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y through 1.z:	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