



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



In the matter of:)
)
) ISCR Case No. 16-01977
)
Applicant for Security Clearance)

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: *Pro se*

07/02/2018

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On June 2, 2015, Applicant submitted a security clearance application (SCA). On July 11, 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.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 Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued on or after that date.

¹ Items 1, 3

Applicant answered the SOR initially on August 19, 2016. She admitted all of the SOR allegations under Guideline F, except the debt alleged in SOR ¶ 1.n., for which she stated she was not familiar with the account. She also claimed the debts alleged in SOR ¶¶ 1.p and 1.q were duplicate debts. She provided a detailed explanation with her answer. She requested that her case be decided by an administrative judge on the written record in lieu of a hearing. (Item 2) On September 28, 2016, 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 on October 18, 2016. The package was returned by Applicant's former employer due to her separation from employment.

The FORM was reissued to Applicant on March 22, 2018, after it was determined that she was working for another federal contractor. 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 provided updated information in her response about the status of her debts on June 13, 2018. She provided documentation labeled Applicant Exhibit (AE) A–G. Applicant did not object to Items 1 through 6, which are admitted into evidence. Department Counsel did not object to AE A-G, which are also admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on January 17, 2018. I received the updated information from Applicant on June 20, 2018.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 53 years old. She earned a bachelor's degree in 2000 and a juris doctorate degree in 2003. Applicant is a licensed attorney. She married her spouse in 1985 and they were divorced in June 2012. She has a 29-year-old son. Since March 2011, she has been laid off three times by employers, forced to resign by another employer, and she left at least one other employer voluntarily. During this time period she relocated to different states. She started new employment with a federal contractor in June 2017. She previously held a security clearance from approximately 2007 to 2013.²

The SOR alleged 23 delinquent accounts with a total debt of \$129,817. Under the Financial Section of her SCA, Applicant disclosed several delinquent accounts and stated that she experienced financial strain due to separation from her husband briefly in 2008, her husband's lack of work for four years (2008-2012), the final divorce, multiple periods of unemployment, and relocation expenses.³

The SOR alleged two unpaid student loans, a home foreclosure, two unpaid medical accounts, and 18 other delinquent accounts, to include unpaid utility accounts, unpaid credit card accounts, and a delinquent second mortgage account. It appears that

² Items 1; 3, 4; June 2018 response

³ Items 1, 2, 3; 4; June 2018 response

the first mortgage on her house was satisfied after foreclosure. The debts are supported by credit bureau reports from May 2016 and June 2015.⁴

In August 2016, Applicant answered the Statement of Reasons, but she did not provide supporting documentation to validate that specific accounts were paid. In June 2018, Applicant provided documentation and an updated response to the current status of her debts. She was employed full-time by a federal contractor in June 2017. She provided documentation from her credit bureau report indicating that she disputed several debts alleged in the SOR. The record (AE B) showed that multiple accounts were disputed, **settled** (emphasis added) and removed from the credit report. (SOR ¶¶ 1.a, 1.j, 1.k, 1.l/r (duplicate accounts) 1.o, 1.p, and 1.q) This report also showed that one account was disputed, **paid** (emphasis added) and removed from the report. (SOR ¶ 1.f)⁵

There were two unpaid accounts with the same creditor alleged in the SOR. (SOR ¶¶ 1.d and 1.m) AE B showed that one of these accounts was disputed, **settled** and removed from the report, and the other account was disputed and removed from the credit report. There was no other identifying information on AE B to determine which account was settled, and which account was removed from the credit report. The May 2016 credit report showed that the account alleged in SOR ¶ 1.d in the amount of \$4,773, was most likely the account removed from the credit report with no evidence that it was settled, resolved, or paid.⁶

AE B and C showed that the accounts alleged in SOR ¶¶ 1.g/v (duplicate accounts), 1.i, 1.n, and 1.w were disputed by Applicant and were removed from the credit report. There was no information about the basis of the dispute for any of the accounts, whether they were settled, or paid. Applicant recently reached a settlement agreement with her two defaulted student loans, (SOR 1.b and 1.c), but she did not provide corroborating documentation that she made any payments to settle the loans. There was no evidence presented by Applicant that addressed the current status of the medical account alleged in SOR ¶ 1.t.⁷

Applicant stated that she participated in financial counseling and provided a copy of her monthly budget showing a monthly net remainder of over \$1,200 after paying monthly expenses, to include monthly rent of \$2,900, which she hoped to reduce in the near future. The attached documentation of receipts all appeared to have occurred after Applicant had received the FORM on April 2, 2018. There is evidence that Applicant filed two disputes with the credit reporting agencies, one in August 2016, after the receipt of her SOR, and the second dispute was filed in July 2017, disputing numerous

⁴ Items 1, 5, 6

⁵ AE B: June 2018 response

⁶ Items 1, 5; AE B

⁷ AE B, C and G

delinquent accounts. The total amount of Applicant's unresolved debt is approximately \$102,384.⁸

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 ¶ 2(c), 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 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. 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.

⁸ AE B-G

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.” 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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 had accumulated approximately \$129,817 of delinquent debt that she was unable or unwilling to resolve. The above disqualifying conditions apply.

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 (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; 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's financial problems occurred after her spouse lost employment in 2008, her divorce in 2012, and several periods of unemployment since March 2011. Despite being fully employed since June 2017, her financial difficulties have continued. She has made progress with many of her debts, but she is unable to establish that her financial problems are unlikely to recur or no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is some evidence that Applicant's financial problems occurred due to conditions beyond her control, since both she and her spouse were laid off by their employers, and she experienced a loss of income due to their divorce. In order to receive the full application of the mitigating condition, Applicant must show that she acted reasonably under the circumstances. There is no documented evidence to show that the majority of the debts alleged in the SOR were resolved prior to her receiving the FORM on April 2, 2018. There is no supporting documentation that her defaulted student loans, totaling over \$50,000, have been resolved. There is insufficient evidence to show she acted responsibly under the circumstances in dealing with her creditors, despite being fully employed since June 2017, until her security clearance became an issue. Hence, AG ¶ 20(b) does not fully apply.

There is evidence Applicant received financial counseling. Her monthly budget showed that even after paying rent of \$2,900, she had a net remainder of over \$1,200 at the end of the month. She did not initiate an effort to resolve her delinquent accounts until she received notice from the government that her security clearance was in jeopardy. Paying off creditors in an effort to obtain a security clearance does not constitute a good-faith effort to resolve financial obligations. Applicant disputed the majority of her debts in August 2016 and again in July 2017 with the credit bureau agencies. She has not provided evidence to show that her disputes with creditors are

legitimate, or provide proof of her communication with these creditors explaining the basis for the dispute, in an effort to resolve the unpaid accounts. She failed to provide documentation that her second mortgage loan over \$44,000 is resolved. Applicant acknowledged that many unpaid debts were removed from her credit report after she filed disputes. She also admitted in her SOR answer that many of the disputed accounts were her debts. A delinquent account removed from the credit bureau report for filing an overall dispute does not necessarily alleviate Applicant's responsibility for the debt without credible proof that it was not her debt. AG ¶¶ 20(c), (d) and (e) do not 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 conduct and all the 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 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 ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust with the Government. An applicant is not required to be debt-free, but is required to manage her finances to meet her financial obligations.

Applicant's financial difficulties began several years ago, during a period of unemployment and underemployment. However, she has been fully employed since June 2017, and has had the means to systematically pay off several creditors with her monthly net remainder of over \$1,200. Nevertheless, she provided no documents to establish that she has made sufficient efforts to pay, legitimately dispute, or otherwise

resolve any of the debts alleged in the SOR, until she received the FORM in April 2018. Applicant has not provided a reasonable financial plan to resolve delinquent accounts with her creditors. Applicant failed to demonstrate that she acted reasonably under the circumstances.

Overall, the record evidence leaves me with doubts as to Applicant's reliability, trustworthiness and good judgment, as well as her eligibility and suitability for a security clearance. Because protection of the national interest is the primary focus of these adjudications, any unresolved doubts must be resolved against the granting of eligibility to classified information.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-d:	Against Applicant
Subparagraphs 1.e-h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraphs 1.o-r:	For Applicant
Subparagraphs 1.s-t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v-w:	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 security to grant Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge