



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



In the matter of:

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) ISCR Case No.16-02404
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Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq. Department Counsel
For Applicant: *Pro se*

11/09/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

On October 1, 2016, The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006. Revised Adjudicative Guidelines were issued on December 10, 2016, and became effective on June 8, 2017.¹

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on July 20, 2017. The hearing was conducted on September 29, 2017. Government Exhibits (GX) 1-8 were admitted into evidence without objection. Applicant

¹In this case, the SOR was issued under Adjudicative Guidelines effective within the Defense Department on September 1, 2006. Revised Adjudicative Guidelines became effective June 8, 2017. My decision and formal findings under the revised Guideline F would not be different under the 2006 Guidelines.

testified and submitted Applicant Exhibits (AX) A-H. I kept the record open until November 3, 2017, but Applicant did not submit other documentation. The transcript was received on October 10, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a through 1.m. She noted that some of the accounts were paid and she also provided explanations with her responses.

Applicant is a 42-year-old employee of a defense contractor. She is divorced and has two children. She obtained her undergraduate degree in 1997. She has been with her current employer for 13 years. She completed her security clearance application (SCA) in December 2014. She has held a security clearance since 2005. (GX 1)

Financial Considerations

The SOR alleges that Applicant has 13 delinquent debts, which total approximately \$150,485. The delinquent debts include collection accounts, four student loans, and two medical accounts. The SOR also alleges a state and federal tax lien, a judgment, as well as Applicant's unpaid state taxes for years 2002-2009, unpaid federal taxes for tax years 2002-2009, a state and federal tax lien, and a home foreclosure in 2010.

Applicant's answer acknowledged her financial difficulties over the years. She stated that her marriage, when she was 25 years old, ended in a 2012 divorce due to her husband's drinking and depression in 2007, not paying the household bills. She trusted her husband to manage the money affairs, but had to leave him in 2009, file for divorce, and move to another state. Some of the tax issues and liens, she had no knowledge and learned years later. Since 2011, she has made a new start and became proactive in her finances. She noted that in the process of separation and divorce, she became financially challenged because she was the sole provider for herself and her children. She recently started receiving minimal child support. (Tr. 16)

Applicant's current salary is about \$154,000. She worked with a consolidation company. She has no current delinquent debt. She has between \$800 and \$1,000 monthly net remainder. (Tr. 64) At this point in time, she has no savings. She submitted a budget. (GX 2) She has paid other debts not listed on the SOR.

As to SOR ¶ 1.a, a mortgage home foreclosure in 2011, Applicant left the marital home and her husband remained. He did not pay the mortgage loan. Applicant presented a 2011 court order and judgment of foreclosure - deficiency waived. (AX B)

As to SOR ¶ 1.b, unpaid state taxes from 2002 through 2009, in the amount of \$1,734.25, Applicant stated that the taxes were paid in full in 2016. She submitted payment agreement satisfaction and tax lien expungement. (AX C)

As to SOR ¶ 1.c unpaid federal taxes for the years 2002 through 2009, in the amount of \$8,818, Applicant has a payment agreement in the amount of \$353 monthly. (AX A) The last payment was in September 2016. Before that she stated that her income was garnished and she also made payments in 2013 and 2014. (GX 4) It is noted that she also started a payment plan in 2005, but did not maintain it. (GX 7)

As to SOR ¶ 1.d, a 2016 medical account in the amount of \$518, Applicant stated that it was paid through the Money Management Program that she enrolled in. (AX E)

As to SOR ¶ 1.e, a collection account in the amount of \$341, Applicant settled the account. (AX F)

As to SOR ¶ 1.f, a medical account in the amount of \$155, was paid through the Money Management Plan. (AX E)

As to SOR ¶ 1.g, a 2012 state tax lien in the amount of \$1,262, Applicant submitted the above referenced document in 1.b (tax lien expungement). (AX D)

As to SOR 1.h, a 2006 federal tax lien in the amount of \$10,467. This is in repayment status of \$353 monthly. (AX A)

As to SOR 1.i a judgment in the amount of \$5,456 for a vehicle repossession, Applicant co-signed a car loan with her husband and she had no knowledge of the debt. When she called the company, she was referred to the law firm responsible for the account. She has not heard from them and will work on resolving the account. (AX G) However, she also stated that she does not believe that she owes the debt. (Tr. 43)

As to SOR ¶¶ 1.j, k, and l, student loan collection accounts in the amount of \$29,705, \$23,737 and \$10,581, respectively, Applicant stated that they have been consolidated in an account for the amount of \$63,167.

As to SOR 1.m, this is a consolidation of the above-noted student loans in the total amount of \$63,810. Applicant entered a repayment program in 2016. (AX H) She stated that she completed the nine month rehabilitation period and is current on payments. She did not supply any documentation to support this assertion. (Tr. 45)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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(d) 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at a 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 describes conditions that could raise a security concern and may be disqualifying:

- (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; 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.

The Government produced credible evidence to establish the delinquent debts, delinquent federal and state and tax liens. Consequently, the evidence is sufficient to raise disqualifying conditions. ¶¶ 19(a), 19(b), 19(c), and 19(f).

AG ¶ 20 provides conditions that could mitigate the security concerns:

- (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 person has received or is receiving 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

(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.

Applicant separated, divorced, and encountered delinquent debt. She has encountered many challenges to provide for her children. However, she has ongoing financial problems. Applicant has received financial counseling through the Money Management company. She has been steadily working for a number of years and has held a security clearance. She presented documentation that she has paid some debts. She has entered into a payment arrangement with the IRS, but did not provide information that she has made payments since 2016. She did not submit any post-hearing information concerning this issue. There is still a balance of \$16,000. In the past she has started payment plans and stopped them. It is not clear from the record that she is in current compliance with the tax payments. She had events occur that were beyond her control, but has not acted responsibly in all areas. In addition, Applicant provided no information about the \$63,000 consolidated student loans as requested. MC AG ¶¶ 20 (a), (b), (c), (d) and (g) do not apply. She has not met her burden to alleviate the security concerns under the financial considerations guideline.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 42 years old. She is divorced and has two children. She has been employed for a number of years and has held a security clearance. She has provided for her children. Applicant has paid several debts and tax liens. There is no deficiency on the home foreclosure. While she presented documentation for many allegations, she has not submitted any information on the \$63,000 owed for student loans or the fact that she is current with her IRS payment plan. She has not met her burden of proof in this case.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the record evidence in the context of the whole person, I conclude that Applicant has not provided sufficient documentation to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information. Any doubts must be resolved in favor of the government.

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
Subparagraphs 1.a-g:	For Applicant
Subparagraphs 1.h-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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge