



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



In the matter of:

ISCR Case No. 16-03519

Applicant for Security Clearance

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

February 20, 2018

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On March 6, 2017, Applicant submitted a security clearance application (e-QIP). On January 6, 2017, 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 (EO) 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 February 15, 2017. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 3.) On July 25, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 7 Items, was mailed to Applicant on July 25, 2017, and received by her on August 7, 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 his receipt of the

FORM. Applicant failed to respond to the FORM. Applicant did not object to Items 1 through 7, and they are admitted into evidence, hereinafter referenced as Government Exhibits 1 through 7.

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*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions 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 by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 29 years old. She is married with two children. She has a high school diploma. She is employed with a defense contractor as a Mail Clerk. She is applying for a security clearance in connection with her employment. Applicant began working for her current employer in February 2016.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information. The SOR identified eight delinquent medical accounts that have been placed for collection totaling in excess of \$38,000. Applicant admits to each of the delinquent accounts listed in the SOR. Credit Reports of Applicant dated March 31, 2016; and July 20, 2017; confirm the indebtedness listed in the SOR. (Government Exhibits 5 and 6.)

In September 2012, Applicant underwent emergency gall bladder surgery that she believed was covered by medical insurance provided for by her previous employer. Her insurance claims were subsequently rejected because they recorded Applicant as being a citizen of Mexico, and that her coverage extended to medical claims were for treatment only in Oman and in Mexico. Applicant claims that this was a typographical error that is being corrected so that they claims will be paid.

Applicant claims that each of the delinquent medical accounts listed in the SOR are currently in dispute with her previous employer with whom she worked from October 2011 through February 2014. She contends that her employment contract stated that all medical expenses were to be covered by the employer, and that the issue is in the process of being remedied and paid. Applicant failed to provide any supporting

documentation to show the dispute with her former employer or any other evidence to support the fact that the debts are in the process of being resolved and paid. Furthermore, she has not identified any specific actions that she has taken to resolve this issue nor provided any corroborating documentation to show the actions she has taken, if any to resolve the issue. Accordingly to information set forth in her security clearance background interview dated April 8, 2016, the most recent communication from the insurance company was in January 2014, when Applicant spoke to her supervisor and the human resource director about the medical bills and they did nothing about the issue. There is no evidence in the record as to whether the Applicant has spoken to the insurance company since January 2014, or whether she has a legitimate basis to contest her debts. She states that she does not intend to pay the bills.

The following medical accounts became owing:

1.a. A delinquent medical account was placed for collection in the approximate amount of \$450. The account remains outstanding. (Answer to SOR.)

1.b. A delinquent medical account was placed for collection in the approximate amount of \$1,660. The account remains outstanding. (Answer to SOR.)

1.c. A delinquent medical account was placed for collection in the approximate amount of \$265. The account remains outstanding. (Answer to SOR.)

1.d. A delinquent medical account was placed for collection in the approximate amount of \$1,563. The account remains owing. (Answer to SOR.)

1.e. A delinquent medical account was placed for collection in the approximate amount of \$560. The account remains owing. (Answer to SOR.)

1.f. A delinquent medical account was placed for collection in the approximate amount of \$711. The account remains owing. (Answer to SOR.)

1.g. A delinquent medical account was placed for collection in the approximate amount of \$32,280. The account remains owing. (Answer to SOR.)

1.h. A delinquent debt was placed for collection in the approximate amount of \$646. The debt remains owing. (Answer to SOR.)

There is no documentation in the record to show that Applicant has done anything to resolve her debt. The record is void of any mitigation.

Policies

When evaluating an applicant's suitability for a security clearance, 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 access to 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable 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 is excessively indebted to the creditors listed in the SOR. Although she claims that the debts are in dispute, she has provided nothing to substantiate her claim, or show whether she has a legitimate basis to contest these debts. The record lacks appropriate documentation to substantiate the information she has provided. She has not indicated that she has set up payment arrangements to resolve the debt, or that she has otherwise settled the debt. There is no evidence in the record to prove that she has done anything to resolve her delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

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

- (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; 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 has provided no documentation to corroborate her claim that she is disputing the debts, or that she has a legitimate basis to contest the debts, or that they are being resolved by the insurance company. Under the particular circumstances here, Applicant has failed to establish that she has acted reasonably or responsibly with respect to her debts. As it stands, Applicant has not addressed any of her delinquent debt, nor has she demonstrated that future financial problems are unlikely. Most importantly, it has not been demonstrated that her current financial problems are under control. Applicant has not provided sufficient evidence to prove mitigation.

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. There is no documentation to corroborate her explanation for these debts. Furthermore, Applicant has not demonstrated that she is financially responsible.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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.

Darlene Lokey Anderson
Administrative Judge