



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



In the matter of:

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) ISCR Case No.16-03856
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Applicant for Security Clearance

Appearances

For Government: Nicholas Temple, Esq. Department Counsel
For Applicant: *Pro se*

01/09/2018

Decision

LYNCH, Noreen A., Administrative Judge:

On January 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 September 26, 2017. A notice of hearing dated October 4, 2017,

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 Guidelines F and E would not be different under the 2006 Guidelines.

scheduled the case for November 30, 2017. Government Exhibits (GX) 1-10 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-G which were admitted into the record. The transcript of the hearing was received on December 8, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a-f. She agreed that she omitted information under SOR allegation ¶ 2.a. She provided explanations with her responses.

Applicant is a 35-year-old employee of a defense contractor. She is single with no children. She obtained her undergraduate degree in 2005. She has been with her current employer since October 2015. She completed her most recent security clearance application (SCA) in December 2015. She has held a security clearance for almost seven years. (GX 1)

Financial Considerations

The SOR alleges that Applicant has six delinquent debts, which total approximately \$60,000. The delinquent debts include student loans, collection accounts, and medical accounts.

Applicant's answer provided reasons for her delinquent accounts. She acknowledged that she defaulted on her student loans after the period of deferment due to the financial help she was providing for her ill mother who has a myriad of health issues. (SOR 1.a) Applicant pays for all her medications, some utilities and rent. (Tr. 20) She volunteered that she co-signed for a car loan for her mother. Her mother defaulted and Applicant tried to pay the car loan. (Tr. 16) She was also making payments on her own car note. Applicant also turned over some of her income tax refund checks to help her mother. Applicant had some health issues and went to an emergency room, which occurred a while ago. She had health insurance and was unaware it resulted in a debt. (SOR 1.d) attributed to her because she paid a co-pay to her health insurance company.

Applicant acknowledged that while helping her mother, she was not minding her own credit or taking responsibility for it. (Answer to SOR) She stated that her student loans required a monthly payment of \$600, and she did not have sufficient income to pay the amount. After her graduation from college in 2005, she was unemployed until 2007. Her latest SCA records unemployment in 2013 and from December 2009 to March 2010. She moved to another state for better job opportunities. This exacerbated her financial issues. She also admitted that she did not know how to manage her money at the time. (Tr. 33)

Applicant disclosed her financial issues in her 2010 SCA (GX 5) in detail (student loans) and in her declaration of federal employment (GX 4), which was completed in

2013. Applicant stated credibly that she never intended to lie, fabricate, or not be consistent about her financial issues. She has nothing to hide. (Tr. 16) The other delinquent debts alleged in the SOR were either not known to her, or Applicant had spoken to the investigator about them during the security clearance process.

Applicant submitted her latest SCA in December 2015. She did not report any issues under the financial questions for the last seven years. She denied intentionally falsifying the SCA. After considering all the evidence, I find insufficient evidence for a determination that Applicant intentionally falsified the SCA. She noted that she had been rushing and she had inattention to detail and a sense that no other questions needed to be addressed because she had already made the information known to the Government. (Tr. 48)

As to the student loans listed as SOR allegation 1.a, totaling \$57,297, Applicant provided information from the company that allowed her to rehabilitate her student loans. (AX D, F, and G) The loans have been completely rehabilitated with her nine months of payments, and she has engaged with the new student loan holder who will receive a monthly payment of \$262.29 per month beginning in mid December 2017. The student loans are considered in "green status." (Tr. 24)

As to SOR 1.b, a cable account in collection for \$909, Applicant has not paid the account. She forgot to return a cable box. She is currently working with Lexington Law Firm, a credit repair service. The delinquent amount is still showing on one credit report. (Tr. 26)

The debt alleged in SOR 1.c, a collection account in the amount of \$522, was settled for \$313. (AX C) The document that Applicant submitted reflected a zero balance.

As to SOR allegation 1.d, a medical account for \$437, Applicant disputes the amount. She had health insurance and paid a co-pay of \$100 to cover the costs. She does not understand why it is on her credit report. (Tr. 28) She has not paid on the account, and she is working with the credit repair service to have it removed from her credit report.

The SOR allegation 1.e, a credit account in the amount of \$272, and 1.f, for \$173 were overdraft fees and have been paid. (AX B)

Applicant's current salary is about \$98,000. She stated that she uses a budget and after her expenses tries to save money. She was using a financial counselor at one point in time. In October 2017, she obtained the services of Lexington Law. (AX E) She has a steady income and is current on her car loan. She has a retirement account. Her 2016 credit report listed many accounts that are "pays as agreed." (GX 6)

Applicant submitted a notarized letter of recommendation from her mother who attests to her daughter's constant financial help when she needed it. Applicant's mother

stated that she can always be counted on. She stated that Applicant has nothing to be ashamed of by taking care of her mother. (AX A)

Applicant is an active member of her church and she helps in the community by mentoring young girls who want to succeed in a career. She also assists in a homeless shelter and helps the women with various activities. (Tr. 54)

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

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).

decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

The Government produced credible evidence to establish the delinquent debts and the delinquent student loan accounts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(b), 19(c).

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; and

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

Applicant has had ongoing financial problems, but not due to overspending, gambling or major irresponsibility. She went to college to better her employment opportunities and when she graduated in 2005, she could not find a job until 2007. She helped her ill mother financially and put herself and her own expenses second. She realizes that is poor management. She was young and felt a responsibility to her mother. She also had other periods of unemployment. Her school loans (the bulk of her delinquent debt) were in deferment. When she started to pay, she realized she did not have the \$600 a month that was required. She was always candid about her student loans. She learned that she could rehabilitate the student loans and then return to a payment plan with smaller payments. She completed nine months of rehabilitation. She stands ready to start the new plan.

Applicant now has a steady job with a good salary and does not give much to her mother. She is credited for her acknowledgment that she did not take responsibility for her credit after college. Applicant has recently paid smaller debts and settled some accounts. She worked with a financial counselor until she could not afford to do so. She obtained the services of a credit repair company and is working with them. She disputed one medical account because she had health insurance and paid the co-payment. She has held a security clearance for seven years. She understands the importance of building her financial track record. Applicant had started payment plans after 2007, but she had to default because she was unemployed and did not have sufficient income. She has now paid those accounts. She initiated her rehabilitation program for her student loans. She has made a good-faith effort to resolve the student loans. I believe she will continue. She has presented sufficient information to mitigate security concerns. MC AG ¶¶ 20 (a), (b), (c), and (d) apply. She has met her burden to alleviate the security concerns under the financial considerations guideline.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other

failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

There is insufficient evidence for a determination that Applicant intentionally falsified the SF 86 in 2015. AG 16 (a) has not been established. SOR 2.a is concluded for 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 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 35 years old. She is single and has no children. She decided to attend college and obtain a degree for better job opportunities. She obtained student loans. She did not find employment for almost two years. She helped her mother financially. She has held a steady job for seven years with a security clearance. She has rehabilitated her defaulted student loans and completed the nine-month plan. Her student loans are now current and she stands ready to start her new payment plan. She had tried in the past to pay accounts and had to default due to unemployment. She has

no criminal record. She accepts responsibility for her financial issues. She worked with a financial counselor. She could have been more proactive with resolving the student loans, but did not know the system and also felt it necessary to help her mother. That does not detract from her suitability to hold her clearance. She provided documentation about her delinquent accounts that have been resolved. I find that there are clear indications that her financial issues are being resolved. As to personal conduct falsification issues, she has refuted the concern under Guideline E.

After weighing the disqualifying and mitigating conditions under Guideline F, and Guideline E, and evaluating all the record evidence in the context of the whole person, I conclude that Applicant has carried her burden. It is clearly consistent with the national interest to grant her continued eligibility for access 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:	FOR APPLICANT
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Subparagraphs 1.a-1.f:	For Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge