



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



In the matter of:)
)
) ISCR Case No. 16-03971
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/16/2018

Decision

BENSON, Pamela C., Administrative Judge:

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

Statement of the Case

On March 24, 2016, Applicant submitted a security clearance application (SCA). On January 27, 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). 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 (AG) effective within the DOD on September 1, 2006. On June

8, 2017, new AG were implemented and are effective for decisions issued on or after that date.¹

On March 21, 2017, Applicant responded to the SOR, and she requested a decision based on the administrative record, without a hearing before an administrative judge. On July 20, 2017, Department Counsel submitted the Government's file of relevant material (FORM). The Government's evidence is identified as Items 1 through 5. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She did not provide a response to the FORM, object to the Government's evidence, or submit documents. Government Exhibits (Items) 1 through 5 were admitted into the record. The case was assigned to me on December 18, 2017.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 40 years old, married to her current spouse since 2012, and she has two prior divorces. She has a 14 year-old son, and three step children, ages 20, 17 and 12. She completed some college courses, but did not earn a degree. Since January 2016, she has been employed by a federal contractor as a consultant. (Items 2 and 3)

The SOR alleges 55 delinquent debts, with the majority of these debts identified as delinquent medical accounts. In addition, Applicant has three unpaid student loans. The combined amount of delinquent debt cited in the SOR totals approximately \$63,000. There are 19 delinquent accounts that are less than \$100. Applicant admitted all of the allegations (SOR ¶¶ 1.a through 1.ccc.) in her response to the SOR. She explained that the medical debts were created for three surgeries she had within five years, and after her spouse was diagnosed with a serious illness that required medical treatment. She acknowledged that 32 of her medical accounts were less than \$200. She estimated that if she continued with her debt repayment plan, she could have all 32 of these medical accounts paid within six months. She also claimed that she had set up a payment plan with a collections agency to pay off the larger medical accounts. In addition, she stated that she was working with her student loan creditors to rehabilitate her student loans. Applicant did not provide any supporting documentation with her response to the SOR. (Item 2)

Applicant listed in the March 2016 SCA that her financial issues began after her first husband left the marriage in 2006. At that time, she was a single mom with a child, and she was making only \$13,500 a year. She was barely able to pay for utilities and daily living expenses, and did not have sufficient money to pay other bills. She has maintained full-time employment without any periods of unemployment from 2006 to March 2016. She listed on the SCA that she was currently in the process of making payment arrangements and negotiating settlements with her creditors. (Item 3)

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Policies

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

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 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.

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

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant experienced financial difficulty beginning in 2006 following the divorce from her first spouse. Since that time, she has accumulated numerous delinquent medical debts, unpaid student loans, as well as unpaid utility and consumer debt. Her financial problems have continued despite Applicant working full-time jobs since 2006. The delinquent debts alleged are unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

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; and

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

Applicant began experiencing financial problems in 2006 after her divorce, a situation beyond her control. She has 55 separate allegations of delinquent debt cited in the SOR. Her financial issues have continued to the present time. She has been employed full-time since her first divorce. She claimed to have arranged repayment plans with some of her creditors, but there is insufficient evidence in the record to support her assertions. Applicant has numerous debts that remain unresolved. She has not provided proof that she has paid or resolved even the smallest debt in the SOR. There is no evidence that she has acted responsibly under the circumstances. Her financial issues are ongoing. AG ¶¶ 20(a) and (b) do not apply.

There is no evidence that Applicant is enrolled in a credit service or undertaken financial counseling. There is insufficient evidence to show that she has made a good-faith effort to repay overdue creditors or otherwise resolve her delinquent debts. Insufficient evidence was provided to apply AG ¶¶ 20(c) and 20(d).

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 that guideline, but some warrant additional comment.

Applicant has been unable to satisfy her financial obligations for many years, due to underpaid employment and circumstances beyond her control. These debts have accumulated over the years, to the point that her overall debt is substantial. She has maintained full-time employment since 2006. Applicant stated in her March 2017 response to the SOR that 32 of her delinquent medical accounts were less than \$200. She claimed that these accounts could be satisfied within six months through her repayment plan. Despite Department Counsel noting in the Government's brief that Applicant had failed to provide any supporting documentation to show that she is resolving her debts, Applicant chose not to submit any such documentation. Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be resolved against the granting of 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: **AGAINST APPLICANT**

Subparagraphs 1.a-1.ccc: 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