



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



In the matter of:

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) ISCR Case No. 17-00339
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Applicant for Security Clearance

Appearances

For Government: Ray T. Blank, Jr., Department Counsel
For Applicant: *Pro se*

January 26, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 1, 2016, Applicant submitted a security clearance application (e-QIP). On March 15, 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 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 March 29, 2017. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On May 3, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 8 Items, was mailed to Applicant on May 8, 2017, and received by her on May 15, 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. DOHA assigned the case to me on November 9, 2017. Items 1 through 8 are admitted into evidence.

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 45 years old and divorced with three children. She has a high school diploma. She holds the position of a material handling laborer. She is seeking to obtain a security clearance in connection with her employment.

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.

Applicant has an unstable employment history. From February 2015 to the present she has been employed as an Operator for a private company. From June 2016, she has also been working for her current employer. She held a seasonal position from June 2013 to January 2015. From July 2012 to June 2013 she was unemployed. She did assembly work for a temp agency from May 2011 to July 2012. Applicant worked as a driver November 2009 to May 2-11. She was unemployed from December 2008 to November 2009. From June 1997 she worked for a department store's distribution until she was terminated for attendance issues in December 2008.

Applicant and her husband filed for Chapter 7 bankruptcy in or about July 2009. Her delinquent credit card debts and other consumer debts were discharged in October 2009. Applicant blames most of her delinquent debt to her divorce in 2010. She fails to provide any information concerning the financial impact the divorce had or why the effects have continued for several years. Credit reports of the Applicant dated September 17, 2016; and May 3, 2017; confirm that Applicant has not resolved any of the delinquent debts listed in the SOR.

The SOR identified seven debts totaling approximately \$24,953. Applicant admits allegations 1.a., 1.b., 1.c., and 1.d. She denied allegations 1.e., 1.f., 1.g., and 1h. Applicant began working full time with her current employer in June 2016. Since then, she has done nothing to resolve her delinquent debt. There has been no evidence presented that demonstrates that Applicant has taken any steps to resolve the debt by setting up payment plans or otherwise demonstrate an established track record of debt resolution efforts.

The following debts listed in the SOR remain owing:

(a) A judgment was filed against the Applicant in April 2016 in the approximate amount of \$4,584. Applicant states that the vehicle was returned due to the number of problems she had with it. The judgment remains unpaid.

(b) See, Applicant's Chapter 7 Bankruptcy discussed above.

(c) A delinquent credit card debt was placed for collection in the approximate amount of \$8,980. Applicant states that it was about this time that she went through a divorce and lost her job. The debt remains unpaid.

(d) A debt owed to a creditor for the balance due on a repossessed vehicle in the approximate amount of \$11,028 remains unpaid. Applicant stated that the vehicle was returned due to the high interest rate. She learned that the vehicle was sold and that the balance owed is for storage and the remaining balance on the car.

(e) A debt owed to a creditor for an account placed for collections in the approximate amount of \$158 remains unpaid. Applicant denies this debt.

(f) A delinquent medical bill owed to a creditor was placed for collection in the approximate amount of \$123 remains unpaid. Applicant states that she has paid the debt.

(g) A delinquent medical bill owed to a creditor was placed for collection in the approximate amount of \$80 remains unpaid. Applicant states that she has paid this debt.

(h) The government alleges that in March 2001 Applicant was arrested for issuing bad checks. Applicant states that she was never arrested but did go to court on this charge and paid the balance due. She contends that she was only helping her brother out and that she has learned tough lesson from this experience.

There is nothing in the record to show that the Applicant has carried her burden of proof to establish mitigation of the government security concerns under Guideline F.

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. 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 classified information 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. 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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 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 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 or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debt regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant is delinquently indebted in excess of \$24,000. Her actions demonstrated both a history of not addressing her debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating condition under the Financial Considerations is potentially applicable under AG ¶ 20.

- (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), and the individual acted responsibly under the circumstances.

It is recognized that Applicant's inconsistent employment as well as her divorce in 2010 contributed to her financial problems. Since June 2016, Applicant has been working for her current employer on a full time basis, but has not addressed her delinquent debt in any form or fashion. There is no evidence that she has acted responsibly under the circumstances. Her inaction casts doubt on her current reliability, trustworthiness, or good judgment.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated Financial Considerations security concern.

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.:	Against Applicant
Subparagraphs 1.b.:	Against Applicant
Subparagraphs 1.c.:	Against Applicant
Subparagraphs 1.d.:	Against Applicant
Subparagraphs 1.e.:	Against Applicant
Subparagraphs 1.f.:	Against Applicant
Subparagraphs 1.g.:	Against Applicant
Subparagraphs 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge