



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



In the matter of:)
)
) ISCR Case No. 17-00595
)
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

07/06/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 13, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations. Applicant responded to the SOR on May 8, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on December 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 10, 2018, scheduling the hearing for February 14, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1, 3, and 4 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through M, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that I have marked

AE N and O and admitted without objection. DOHA received the hearing transcript (Tr.) on February 23, 2018.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. She has worked for her current employer since about March 2017. She served in the U.S. military from 2000 until she was honorably discharged in 2003. She is a disabled veteran with 20% service-connected disability compensation from the Department of Veterans Affairs. She is applying for a security clearance for the first time since her discharge from the military. She attended college for a period without earning a degree. She married in 2001 and divorced in 2004. She married again in 2009. She has been separated since 2010. She has three children, ages 19, 16, and 15.¹

Applicant had her oldest child before she joined the military. She has never received child support from the father. She met her first husband in the military, and they had two children together. Two of Applicant's children have special needs. When Applicant and her first husband divorced, she agreed that he would have custody of their two children, so that he could keep his house on base. Her first husband quickly remarried, and Applicant was ordered to pay \$360 per month in child support.²

In January 2014, Applicant's first husband asked if he and the two children could live with Applicant. He moved out after four months, but he left the children with Applicant. The court-ordered child support continued to be garnished from her wages and paid to her first husband, even though she had the children. It was a slow process, and the court did not terminate Applicant's child-support obligation until July 2017. Between March 2005 and March 2017, Applicant paid her first husband more than \$50,000 in child support. In July 2017, the court ordered her first husband to pay \$511 per month in child support. He paid until November 2017, when he lost his job.³

The SOR alleges 26 delinquent debts. Applicant admitted owing the debts alleged in SOR ¶¶ 1.b-1.d, 1.f, 1.h-1.o, 1.q, 1.s, and 1.v. She also admitted owing the debt alleged in SOR ¶ 1.a, but she established that the deficiency amount owed on an auto loan after the vehicle was repossessed was \$8,083 and not the amount alleged of \$19,129. The total amount owed for the above debts, as recalculated, is about \$28,500. She established that she paid the \$841 judgment alleged in SOR ¶ 1.n in 2015. She denied the remaining allegations. Only two of the remaining debts are listed on the most recent credit report.⁴

¹ Tr. at 21, 26; Applicant's response to SOR; GE 1; AE C, E, F.

² Tr. at 27-28; Applicant's response to SOR; GE 1; AE C.

³ Tr. at 28-32; Applicant's response to SOR; AE C, G-J.

⁴ Applicant's response to SOR: GE 3, 4; AE A, B, K.

Applicant relocated to her current state of residence in 2015 for a better job. The move was more costly than anticipated. She contracted with a debt-management company in January 2018 to assist in resolving her debts. She agreed to pay \$433 on February 1, 2018, followed by monthly payments of \$383. The company would negotiate with her creditors and use the accumulated funds to settle her debts.⁵

Applicant did not make the \$433 payment on February 1, 2018. She stated that she planned to make the payment from her income tax refund, which she did not receive in time. She stated that the payment would be made on February 16, 2018, two days after the hearing.⁶

Applicant testified that she intends to pay her debts. Her father passed away a week before the hearing. She incurred expenses for travel to his location and funeral arrangements. She has about \$62,000 in student loans that were scheduled to come out of deferment. She did not provide evidence of payments to the debt-management company or any other creditors with the exception of the judgment that was paid in 2015. She wrote in her post-hearing e-mail: "I have to be honest as a single mother without help life happens and I will get behind probably again."⁷

A witness testified and Applicant submitted a letter attesting to her excellent job performance. She is praised for her judgment, reliability, professionalism, trustworthiness, and integrity.⁸

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's

⁵ Tr. at 34, 42; Applicant's response to SOR; GE 1; AE M.

⁶ Tr. at 35-36, 42.

⁷ Tr. at 54-57; AE C, L, N, O.

⁸ Tr. at 20-24; AE D.

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.”

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 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 the applicant may deliberately or inadvertently fail to safeguard 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 never received child support for her oldest child. Two of her children have special needs. She has been separated from her second husband since 2010. She paid child support to her first husband for years while having custody of their two children. After the court finally ordered her first husband to pay child support, he paid for a period and then stopped. Her relocation to her current state of residence in 2015 for a better job was more costly than anticipated. She incurred unanticipated expenses when her father passed away a week before the hearing. Those events were beyond her control.

Applicant paid the \$841 judgment alleged in SOR ¶ 1.n in 2015. Only two of the debts that she denied owing are listed on the most recent credit report. Applicant has been forthcoming about her other debts. The debts that Applicant denied owing are relatively small and are mitigated.

Applicant established that the deficiency owed on an auto loan after the vehicle was repossessed was \$8,083, and not the \$19,129 alleged in SOR ¶ 1.a. The amount alleged above \$8,083 is concluded for Applicant. She stated that she intends to pay her debts, but with the exception of the judgment paid in 2015, she has not paid any of the debts alleged in the SOR. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). She also has about \$62,000 in student loans that were scheduled to come out of deferment.

I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. Applicant may reach a point where her finances are sufficiently in order to warrant a security clearance, but she is not there at this time. AG ¶¶ 20(a) and 20(c) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶¶ 20(d) and 20(e) are only applicable to the debts addressed above. I find that financial considerations concerns remain despite the presence of some 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service and favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraph 1.a (\$8,083):	Against Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraphs 1.t-1.u:	For Applicant
Subparagraph 1.v:	Against Applicant
Subparagraphs 1.w-1.z:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge