



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



In the matter of:)
)
) ISCR Case No. 17-01586
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: Victoria Cooper, Personal Representative

11/01/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On May 30, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns 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 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 after that date.¹

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.

Applicant answered the SOR on June 19, 2017, and requested a hearing before an administrative judge. The case was assigned to me on August 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2017. I convened the hearing as scheduled on September 19, 2017. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibit (AE) A. There were no objections to any exhibits offered and all were admitted into evidence. Hearing Exhibit (HE) II is a demonstrative exhibit. DOHA received the hearing transcript on September 27, 2017.

Procedural Issues

Department Counsel submitted an amendment to the SOR, which was previously provided to Applicant. It corrected typographical errors and account numbers. It also withdrew SOR ¶¶ 1.k and 1.o as duplicates. Applicant had no objection and the motion was granted.²

Findings of Fact

Applicant admitted all of the SOR allegations in ¶ 1 and denied the allegation in ¶ 2. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. She earned an associate's degree in 2002 and continued to attend college classes, but did not earn a degree. She married in 1984 and divorced in 1995. She remarried in 1999 and widowed in February 2017. She has two adult children ages 35, and 25.

Applicant was employed by the same company from 1987 to July 2009. She disclosed on her security clearance application (SCA) that she was unemployed from July 2007 to September 2009 because her "children's father passed away and they were having trouble with his death."³ Her husband supported her. She went back to work in October 2011 and worked for this employer until sometime 2015. She was employed by a different employer from October 2015 to June 2016, when she was laid off. She began working for her present employer, a federal contractor, in July 2017.⁴

Applicant testified that she obtained student loans from 2003 to 2009 (SOR ¶¶ 1.a-1.h and 1.s-1.x, totaling approximately \$67,751). They were in deferment for a period. She has never made a payment on any of the loans. In the last 90 days, she has been working with a third party and is attempting to consolidate them. She stated that she does not dispute that she owes these loans and plans on paying them, but previous

² HE I.

³ GE 1.

⁴ Tr. 17, 20-24, 32-33, 51.

circumstances have not allowed her to do. She planned to repay these loans after she started her new job.⁵

Applicant's husband passed away in a fire at their home in February 2017, and her financial paperwork was kept in the kitchen and destroyed. She is the beneficiary of his two life insurance policies. She receives \$4,197 a month for three years from one policy and a lump sum of \$214,000 that is in a revocable trust from the other. She stated she had an appointment with a financial advisor 45 days ago. He told her to gather her financial information, and they would come up with a plan to help her with a budget and planning. Applicant stated that she has a second mortgage of \$37,000 that she is responsible for resolving. She has a payment arrangement with the bank to resolve it.⁶

Applicant acknowledged the medical debts alleged in the SOR (§§1.l-\$561; 1.m-\$561; 1.n-\$247; 1.p-\$179; 1.q-\$172; 1.r-\$67; 1.y-\$4,234; 1.z-\$2,773; 1.aa-\$1,065; 1.bb-\$69; 1.cc-\$62). In 2015, during her background interview with a government investigator, she was confronted with many of them. She stated that she has contacted some medical creditors and has been paying them, but none of them are creditors for the debts on the SOR. The SOR alleged medical bills went to collection from approximately 2010 to 2015. None has been paid.⁷

Applicant acknowledged the debt to a cellphone provider in SOR § 1.i (\$1,346). She disputed this debt because she stated that she had contacted the cellphone company and told them to block the cellphone to prevent her daughter from making purchases, and it failed to do so. Her daughter was on her account. Applicant indicated that the debt is more than five years old and is being resolved.⁸

The debt in SOR § 1.j (\$1,003) is a car loan that Applicant thought was paid. During her 2015 background interview, she was confronted with the debt. She stated she paid the loan from 2006 to 2011 and believed it was satisfied. When she learned there was a balance, she was unemployed, and unable to pay it. She testified that she has asked the creditor for the amount to be paid and was advised it would be sent to her. She intends to pay it when she receives it. The debt remains unresolved.⁹

The debts alleged in the SOR are supported by Applicant's admissions and credit reports from October 2015 and July 2016.¹⁰

⁵ Tr. 38-45.

⁶ Tr. 42-50.

⁷ Tr. 29-32, 35.

⁸ GE 2; Tr. 36-38.

⁹ GE 2; Tr. 26-29.

¹⁰ GE 2, 3, 4.

Applicant testified that she did not receive unemployment benefits when she was unemployed because her husband was earning an income. She stated that she did not pay her bills because her husband had legal problems, which included several driving under the influences charges from 2011 through 2015. He was required to pay for driving classes. They also owed income taxes for years 2009 and 2010 that affected her ability to pay other bills. She testified that she is current on all of her tax payments.¹¹

Applicant completed a security clearance application (SCA) in September 2015. Section 26 asked if she had defaulted on any type of loan in the past seven years; if she had bills or debts turned over to a collection agency in the last seven years; if she had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed in the last seven years; or if she had been over 120 days delinquent on any debt not previously entered for which she was the sole debtor, as well as a cosigner or guarantor. Applicant answered “no” to all of these questions.¹²

Applicant met with a government investigator in November 2015. She was given an opportunity to provide any additional information about her financial record. She confirmed that all of the information listed on her SCA was accurate. She was then confronted with her delinquent debts. She acknowledged the medical debts and indicated she was unaware when they were opened or collection details. She hoped to eventually put the debts on a payment plan and pay them off as soon as possible. She confirmed that she disputed the debt in SOR ¶ 1.i as detailed above. She also acknowledged the car loan debt in SOR ¶ 1.j as detailed above.¹³

During her interview, Applicant was confronted with her delinquent student loans. She stated they belonged to both her and her daughter. She was unaware of collection details. She was not currently making payments because she was pursuing a student loan forgiveness program. She stated that once she completed the program, she would then arrange a payment plan to pay the remaining amount owed. She stated she and her husband were unable to make the student loan payments and fell behind.¹⁴

Applicant testified that she failed to disclose derogatory financial matters on her SCA because she was rushed when completing it, and she made a mistake and hit the wrong key when she checked “no” when she should have checked “yes.” I have considered all of the evidence, including that she had an opportunity to correct the information provided on her SCA when she was confronted by the investigator, but did not. She testified that she has never made any payments on the student loans. I conclude

¹¹ Tr. 27-28, 33-35.

¹² GE 1.

¹³ GE 2.

¹⁴ GE 2.

that Applicant was aware of her delinquent student loans and deliberately failed to disclose her financial problems as required when she completed her SCA.¹⁵

Applicant provided a character letter from her present supervisor. She described Applicant as conscientious about security protocol. She is a hard worker, trustworthy, and an important asset to the office.¹⁶

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 states 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.

¹⁵ Tr. 54-56.

¹⁶ AE A.

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts and student loans that she began accumulating several years ago that 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;

(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 has not paid any of her delinquent debts or student loans. She was put on notice in 2015, when she completed her SCA and after her interview with a government investigator, that her debts raised security concerns. She has not arranged to pay them. Her financial problems are ongoing. There is insufficient evidence to apply AG ¶ 20(a).

Applicant attributed her financial problems to a period of unemployment, her husband's legal fees, and insufficient money to pay her debts. Applicant's unemployment from 2009 to 2011 was voluntary and within her control. When she was laid off for a period of time, that was a condition beyond her control, as was her husband's legal fees. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She was aware of her student loans and has never made any payments on them. She told a government investigator that she was pursuing a loan forgiveness program, but did not provide evidence to show what action, if any, she has taken in that regard. She has not made payments or arranged payment plans to resolve other delinquent debts. AG ¶ 20(b) does not apply.

Applicant testified that she recently contacted a financial advisor to help manage her inheritance and set up a financial plan. At the time of hearing, she did not provide evidence of a plan. There is some evidence she received financial counseling, but there is insufficient evidence to conclude that there are clear indications that her financial problems are being resolved or are under control. AG ¶ 20(c) does not apply. There is insufficient evidence to conclude that Applicant has initiated a good-faith effort to resolve her delinquent debts and student loans. AG ¶ 20(d) does not apply.

Applicant testified that she disputed certain debts alleged. She did not provide documented evidence to substantiate the basis of her dispute or evidence of her actions to resolve the issues. AG ¶ 20(e) does not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. I find the following 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.

Applicant testified that when she completed her SCA, she clicked the wrong button when she denied having debts over 120 days delinquent and other inquiries about her finances. Applicant was afforded an opportunity by a government investigator to review her SCA, and she affirmed that the answers were correct. When confronted about her delinquent student loans, she indicated that she got behind on paying them. She was aware of the medical debts and was going to work on a payment plan. At her hearing, Applicant testified that she has never made a student loan payment and was aware of unpaid medical bills. I find that Applicant's omissions on her SCA were deliberate and her explanation was not credible.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

There is no evidence that Applicant made a good-faith effort to correct the omission before she was confronted with the facts. She was given that opportunity by the government investigator. I find AG ¶ 17(a) does not apply. Her deliberate failure to disclose financial problems and delinquencies is not minor and casts doubt on her reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply. There is insufficient evidence to raise AG ¶ 17(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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guideline, but some warrant additional comment.

Applicant is 58 years old. She has more than \$68,000 of student loans and has never made payments on that debt. She also has other delinquent debts including medical accounts. Applicant did not provide sufficient evidence to show she is paying her delinquent debts or resolving her financial problems. She was aware of her delinquent debts and student loans when she completed her SCA and deliberately failed to disclose them. There is insufficient mitigating evidence. 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 security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

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.j:	Against Applicant
Subparagraph 1.k:	Withdrawn
Subparagraphs 1.l-1.n:	Against Applicant
Subparagraph 1.o:	Withdrawn
Subparagraphs 1.p-1.cc:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge