



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



In the matter of:

ISCR Case No. 17-01735

Applicant for Security Clearance

Appearances

For Government: Michelle Tilford, Esq., Department Counsel

For Applicant: *Pro se*

08/31/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 18, 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 and Guideline E, personal conduct. The DOD CAF acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on February 13, 2018, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 30, 2018. The evidence

included in the FORM is identified as Items 4-8 (Items 1-3 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on April 12, 2016. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections or submit any documentary evidence. Items 4-8 are admitted into evidence without objection. The case was assigned to me on July 25, 2018.

Procedural Issue

In the FORM, Department Counsel moves to amend the SOR to withdraw SOR ¶¶ 1.v and 1.w because they are duplicates of other allegations. The motion is granted and those two allegations are withdrawn.

Findings of Fact

Applicant admitted part of the allegations and denied other allegations in her answer to the SOR. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 45 years old. She has worked for a defense contractor since 2015. She was unemployed from June 2015 to October 2015. She has a high school diploma and is a certified nursing assistant (CNA). She is divorced and has three adult children.¹

The SOR alleges 28 delinquent debts (judgments, collections, past due and charged-off accounts) totaling approximately \$25,000. The debts are supported by credit reports from November 2015, March 2017, and March 2018, her statement to an investigator in May 2016, and her SOR admissions in her answer from February 2018. The SOR also alleged that she falsified her security clearance application from October 2015 when she failed to affirmatively respond to questions about whether she defaulted on any loan, whether she had any debts turned over to a collection company, whether she had any charged-off or collection accounts, or whether she was 120 days delinquent on any debt.²

Applicant attributes her financial problems to her period of unemployment and to being a single mother. Applicant documented payments for SOR ¶¶ 1.t and 1.x. She claimed to also have paid SOR ¶¶ 1.j and 1.s, but failed to supply supporting documentation. As for the remaining debts, Applicant failed to produce any documentation showing payments, establishment of payment plans, or any other correspondence reflecting responsible interaction with her creditors. She also failed to produce documentation supporting any of her disputed debts. Except for SOR ¶¶ 1.t

¹ Item 4.

² Items 1-2, 5-8.

and 1.x, Applicant's debts remain unresolved. There is no evidence of financial counseling.³

In her answer to the SOR, Applicant admitted falsifying her security clearance application. During her background interview, she stated she did not know about the debts when she completed her application. Credit reports show that most of the debts were delinquent for a number of years (2014-2016).⁴

Policies

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 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under 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 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

³ Items 2, 5-8.

⁴ Items 2, 5-7.

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 about 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

AG ¶ 18 expresses the security concern for 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 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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Most of Applicant’s delinquent debts remain unpaid or unresolved. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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's debts are recent and most remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented some evidence that the debts were due to circumstances beyond her control (unemployment and being a single mother). She did not show that she took responsible action to attempt to resolve her debts. I find AG ¶ 20(b) partially applies. Other than paying two debts, Applicant failed to provide documentation showing any efforts to contact the remaining creditors and set up payment plans, or make payments on the listed debts. AG ¶ 20(c) partially applies. There is no evidence of financial counseling and no indications that her financial problems are under control. AG ¶ 20(d) does not apply. Applicant failed to document her disputed debts. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

In her SOR answer Applicant admitted that she intentionally omitted information about her delinquent debts when she completed her SCA. I conclude that she intentionally withheld this information when she completed her SCA. AG ¶ 16(a) applies.

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

(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.

Honestly completing an SCA is the initial crucial step in gaining access to classified information. The Government expects, and must rely on, the honesty of applicants during this process. Therefore, providing false information at this stage is not a minor offense. Such deliberate action casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply.

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 guideline 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 considered Applicant's period of unemployment and her single-parent status. However, I also considered that Applicant failed to document actions to resolve most of her delinquent debt. She also failed to present documentation addressing her disputed debt. Applicant has not established a track record of financial stability. She provided false information about her finances on her security clearance application.

Overall, 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.s:	Against Applicant
Subparagraph 1.t, 1.x:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraphs 1.v–1.w:	Withdrawn
Subparagraphs 1.y–1.dd:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge