



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 17-02095

Appearances

For Government: Adrienne M. Driskill, Esquire, Department Counsel
For Applicant: *Pro se*

06/28/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. The personal conduct security concerns are found in her favor. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On July 17, 2017, the Department of Defense (DOD) issued 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 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* (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 25, 2017, and requested that her case be decided by an administrative judge on the written record without a hearing (Answer). On October 3, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and received by her on October 12, 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 her receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's Items. They are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on February 14, 2018.

Findings of Fact

Applicant is 44 years old, married, and has five children. She graduated from a military academy in 1995, served on active duty for ten years, and received an honorable discharge. (Item 2)

Applicant attributed her financial delinquencies to a business she and her husband owned and operated from 2002 to 2009. She said the business, which provided items to military service members, was successful until a supplier encountered production problems. At the end of 2008, she was unable to deliver orders and customers demanded refunds that she could not provide. The state in which she was operating subsequently sued her personally and her company, and assessed a civil penalty of more than \$105,000.¹ The Federal and state governments filed tax liens in 2010 for unpaid payroll taxes for 2008 and 2009. (Items 1, 2)

In March 2016, Applicant submitted a security clearance application (SCA). In it, she disclosed a 2010 Chapter 7 bankruptcy that was discharged in 2011²; outstanding payroll taxes for 2007 and 2008 that she said she was paying; and the civil penalty assessed by the above mentioned state. She stated that she had reduced the \$105,000 civil penalty to about \$60,000. She indicated that all of the debts alleged in the SOR related to her failed business. (Item 2)

During a September 2016 interview, Applicant explained that her delinquent debts related to the closed business. She said that all business debts were discharged in the 2010 bankruptcy, except for the unpaid taxes and the state civil penalty. She stated she had paid a portion of her taxes and also a portion of the civil penalty. She said she anticipated paying the remaining Federal payroll taxes of about \$12,000 by December

¹ In February 2009, Applicant entered into a consent order with State, in which she agreed to pay refunds to customers and provide an accounting to the State court. Applicant did not comply with that consent order, and State moved to have the bankruptcy court determine that the debt was non-dischargeable, which it did. (Item 7)

² The Chapter 7 bankruptcy petition listed the total liabilities owed to creditors as \$2,838,966 and listed the total assets as \$1,261,488.

2016. She stated she was trying to resolve the remaining \$60,000 owed to the state for its civil penalty. (Item 3)

Based on Applicant's disclosures, court records, and credit bureau reports (CBR) from May 2017 and April 2016, the SOR contained six allegations: a 2010 Chapter 7 bankruptcy; an unpaid state civil penalty of \$105,574; a Federal tax lien for \$66,728; a state tax lien for \$17,899; an unpaid \$709 cell phone debt; and a \$51 unpaid medical bill. These debts began accumulating in 2008. The civil penalty and tax liens were not discharged in the bankruptcy, and the two smaller debts postdate it. (Items 1, 4, 5, 6 and 7)

In her August 2017 Answer, Applicant again stated that she paid about \$25,000 of the \$105,000 civil penalty alleged. She admitted that she filed a Chapter 7 bankruptcy in 2010 and discharged debts in 2011 that were attributable to her business failure. She stated that she owed \$17,700 on the Federal tax lien and had settled the \$17,900 state tax lien in 2010. She said she resolved the \$709 cell phone bill and had no knowledge of the \$51 medical debt. (Item 1)

Applicant did not provide documentary evidence to corroborate her assertions that she paid or is paying a portion of the alleged civil penalty and the Federal and state payroll taxes. She did not submit documentation that she resolved the cell phone debt or medical bill. There is no evidence that Applicant participated in financial or credit counseling. She did not provide a budget, or other information related to her financial resources and obligations, from which to determine her current or future financial solvency and reliability.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns and may be disqualifying in this case. Three may 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.

Applicant has a history of being unable or unwilling to meet financial obligations, which began in 2008, includes a 2010 Chapter 7 bankruptcy, and continues to the present. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. The following five 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, or 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
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's delinquent debts began in 2008 and remain unresolved. AG ¶ 20 (a) does not apply. Applicant attributed her financial problems to a business that began failing in 2008, which may have involved circumstances beyond her control. She did not provide evidence demonstrating that she has acted responsibly in managing her financial obligations. AG ¶ 20(b) provides limited mitigation. There is no evidence that she participated in credit or financial counseling. She failed to provide documentary evidence to show that her delinquent debts are being resolved or are under control. AG ¶ 20(c) does not apply. Despite assertions to the contrary, she did not submit evidence of good-faith efforts to resolve her tax liens, a large state civil penalty, or other debts. Nor did she submit documented proof that she has payment plans with the taxing bodies. The evidence does not establish mitigation under AG ¶¶ 20(d) or 20 (g).

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to 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 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 contains no disqualifying condition that would support security concerns in this case that are independent of those comprehensively addressed under Guideline F. The SOR merely re-alleges, by reference, the allegations raised under Guideline F. While any conduct involving questionable judgment or unwillingness to comply with rules and regulations can theoretically fall under Guideline E, as well as other guidelines, no value is added to the analysis of Applicant's national security eligibility by doing so in this case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent 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 is a mature individual who honorably served in the military for 10 years. In the FORM, she was informed that the evidence she submitted in her Answer to the SOR was probably insufficient to mitigate the financial allegations. Despite that notice, she did not provide additional documentary evidence to confirm her assertions that she had resolved some of the alleged debts, or was in the process of resolving them. The amount of delinquent debt alleged in the SOR was about \$191,000. The absence of mitigating evidence for the Guideline F allegations compels a finding that she failed to meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge