



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



In the matter of:)
)
) ISCR Case No. 17-02350
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

10/19/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On July 12, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on August 1, 2017, and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 9, 2018, scheduling the hearing for April 27, 2018. I convened the hearing as scheduled.

I appended to the record as Hearing Exhibits (HE) I and II the Government's discovery letter and exhibit list. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through Y, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until May 11, 2018, for Applicant to submit additional documentation. Applicant did not provide additional evidence. DOHA received the hearing transcript (Tr.) on May 7, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. She is 57 years old. She graduated from high school in 1980, and she earned a bachelor's degree in 1986 and a master's degree in 2011; she was five classes short of obtaining another master's degree. She had never been married and she did not have any children. She had been residing with her mother and sister since October 2014.¹

As of the hearing date, Applicant worked part time for a sports apparel company since November 2017. She had an offer of employment with a defense contractor that was contingent on obtaining a security clearance. She worked for various defense contractors from 2004 to March 2016. She began experiencing periods of unemployment in 2008, primarily due to shorter contract durations. She was unemployed from April to November 2008, May to September 2009, May to June 2010, August 2012 to October 2013, April 2014 to January 2015, and most recently from October 2016 to November 2017.²

The SOR alleges one delinquent consumer account for \$23,928 (SOR ¶ 1.a) and two minor delinquent medical debts totaling \$145 (SOR ¶¶ 1.b – 1.c). The debts are established by Applicant's admissions and credit reports from May 2017, June 2017, and October 2017. Applicant also disclosed some of her debts on her 2015 security clearance application (SCA).³

Applicant attributes her delinquent debts to her belief that the creditor for SOR ¶ 1.a engaged in criminal activity that resulted in her financial inability to pay the underlying debt. She also cited to some confusion on her part about her medical expenses in SOR ¶¶ 1.b and 1.c. She referenced her periods of unemployment as factors that contributed to her financial indebtedness, as well as her limited income of \$9 hourly at her part-time job of 28 hours weekly. Her SCA reflects that she traveled for

¹ Response to the SOR; Tr. at 8-9, 35; GE 1; AE B, H.

² Tr. 6-7, 9-11, 32-35, 57-58; GE 1; AE H, I, J, K, L, W.

³ GE 1, 2; AE D, G, M, U, V.

tourism to the Bahamas in September 2008, and to the Cayman Islands, Haiti, Jamaica, and Mexico in July 2012.⁴

SOR ¶ 1.a is for a credit card, associated with Applicant's former bank account, placed for collection for \$23,928. Applicant purchased a home in May 2006. She scheduled her mortgage payments to be automatically withdrawn from her bank account. In around September 2007, she opened a credit card and attached it to her bank account for overdraft protection. The credit card had a 21% interest rate on cash and overdraft advances, and Applicant understood the rate would apply to any outstanding balance.⁵

In 2008, Applicant experienced difficulty paying her mortgage due to unemployment. She used all available resources, to include money from her 401(k) retirement plan and unemployment benefits, to pay her mortgage. From around 2008 to 2010, her mortgage was automatically withdrawn from her bank account one day before her paycheck was deposited, resulting in regular monthly charges of \$700 to the associated credit card. She testified that she made payments to the credit card to cover the overdraft charges, but she could not determine why funds were missing from her bank account while charges were also being made on her credit card. During this period, her banking institution changed hands twice.⁶

In 2010, Applicant stopped the automatic withdrawal of her mortgage from her bank account because she was confused about how her monthly paycheck of \$7,500 was not covering her monthly expenses of \$5,000. She also closed her bank account, began banking with a different institution, and made her mortgage payments in person. She believed that money was being taken out of her prior bank account for unauthorized reasons and the transactions were not being reflected in her online bank statements. She did not provide documentation to corroborate her belief. She testified that she tried to obtain archived paper bank statements but refused to pay for them, as required by her former bank. Documentation from the underlying creditor reflects that \$16,188 in cash advances and \$3,102 in overdraft advances were subject to the 21% interest rate as of June 2012.⁷

May 2017 documentation from the creditor reflected that Applicant disputed the debt. In response, the creditor indicated that its review confirmed that the debt was accurate. Applicant testified that the creditor did not sue her for the money because she believed it did not want to provide her with paper copies of her bank statements. The creditor noted, however, that it did not sue her because of the age of the debt and the

⁴ Tr. at 15-17, 33-35; GE 1; AE A, K, X, Y.

⁵ Tr. at 35-42, 44, 48-61; GE 1, 2; AE A, D, M, R, T, Y.

⁶ Tr. at 35-42, 44, 48-61; GE 1, 2; AE A, D, M, R, T, Y.

⁷ Tr. at 28-31, 35-42, 44, 48-61; GE 1; AE A, M, R, T, X, Y.

legal timeframe in which to sue on a debt. It noted that if she did not pay the debt, it may continue to report it to the credit reporting agencies as unpaid.⁸

Applicant also disputed the debt with the three credit reporting agencies. As of May 2017, all three agencies investigated her dispute and verified the debt. As such, SOR ¶ 1.a remained in collection with a past-due amount and outstanding balance of \$23,928, and it was scheduled to continue on her record as late as November 2018. As of the date of the hearing, she did not intend to pay the debt and she indicated that she was waiting for it to fall off her credit reports.⁹

SOR ¶¶ 1.b and 1.c are for two minor medical debts totaling \$145. Applicant testified that she paid both debts over the telephone and provided the confirmation numbers as proof of her payments. The October 2017 credit report reflects that both debts were paid and carry a zero balance.¹⁰

Applicant does not have any other delinquent debts. She testified that she worked hard to eliminate negative items from her credit report. She also short sold her home in July 2013, and she was not subsequently responsible for any deficiency balance. She owes \$2,900 in federal taxes for tax year 2012. She testified that she filed a hardship letter with the IRS demonstrating her inability to pay her outstanding taxes due to her lack of income. Until she obtains a steady job, her tax refunds are intercepted and applied to her outstanding taxes. She testified that she received financial counseling between 2006 and 2011, in 2013, and in 2016.¹¹

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 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 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.

⁸ Tr. at 28-31, 35-42, 44, 48-61; GE 1; AE A, C, M, R, T, X, Y.

⁹ Tr. at 28-31, 35-42, 44, 48-61; GE 1; AE A, D, F, G, M, N, R, S, T, U, V, X, Y.

¹⁰ Tr. at 23-24, 42-43; GE 2; AE L, M, O, P, Q, U, V.

¹¹ Tr. at 44-48, 54-59; GE 1, 2; AE D, E, G, M, U, V.

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 Exec. Or. 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* Exec. Or. 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 was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as 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.

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. As she resolved SOR ¶¶ 1.b and 1.c, AG ¶ 20(b) applies to these two debts.

Applicant did not provide documentation to corroborate her belief that her prior bank took money out of her bank account for unauthorized reasons or engaged in any criminal activity that resulted in her financial inability to pay SOR ¶ 1.a. Nor has she demonstrated any efforts to resolve this debt subsequent to her 2017 dispute, in which

the creditor and all three credit reporting agencies informed her that they had verified the debt. Rather, she acknowledged that she was simply waiting for it to fall off her credit report. Waiting for a debt to fall off a credit report does not constitute good faith. She did not provide documentation to corroborate her testimony that she received financial counseling between 2006 and 2011, in 2013, and in 2016. There is insufficient evidence to conclude that Applicant acted responsibly under her circumstances as to SOR ¶ 1.a. Her finances are not under control and there is insufficient evidence to conclude that her financial problems are unlikely to recur. Her failure to address this significant delinquent debt casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is therefore only partially applicable, and AG ¶¶ 20(a), 20(c), 20(d), and 20(e) are not established as to SOR ¶ 1.a.

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. Overall, the record evidence leaves me with questions and doubts as to 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:	Against Applicant
Subparagraphs 1.b – 1.c:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge