



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02905

Appearances

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

05/29/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On September 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On October 17, 2017, Applicant answered the SOR allegations, admitting SOR subparagraph 1.a, 1.b, 1.d, 1.e, 1.h, 1.v, and denying the remaining allegations. She

requested a decision based on the administrative record instead of a hearing. On November 2, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant did not file a response. The case was assigned to me on March 15, 2018.

Preliminary Ruling

Subparagraphs 1.g, 1.i through 1.r, and 1.t allege medical debts without identifying the specific names of any of the creditors. As such, these allegations are vague and overbroad, and do not provide adequate notice to Applicant to enable her to prepare a response. In light of her denial of these allegations, I resolve them in her favor.

Findings of Fact

Applicant is a 51-year-old married woman who has been separated from her husband since 2013. She has been working for a federal contractor as a mail clerk since June 2016.

Applicant worked as a mail carrier from 2000 to 2014. (Item 3 at 5) In December 2013, she was arrested and charged with driving while intoxicated. Her refusal to take a breathalyzer after the stop prompted an automatic one-year suspension of her driver's license per state law. In March 2014, while the charge was pending, Applicant became ill and required surgery. She stopped working, using extended disability leave. (Item 3 at 2) In July 2014, Applicant was dismissed from her job, in part, because she was unable to drive the mail trucks, as her license was suspended. (Item 3 at 4)

Applicant remained unemployed for nearly two years after losing her job, before her current employer hired her. (Item 2 at 12) The majority of Applicant's delinquencies, including her 2014 federal and state income tax delinquencies, as alleged in subparagraphs 1.x and 1.y, stemmed from her unemployment. (Item 2 at 37)

Applicant contends that she is paying her tax delinquencies through a wage garnishment. (Item 1 at 6) She provided no documentary evidence. Similarly, she provided no evidence of any efforts to arrange payment plans, establish a track record of financial payments, or to contact the creditors.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 information. . . .

Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), "failure . . . to pay Federal, state or local income taxes, as required."

The following mitigating conditions are potentially applicable:

¹ The factors under AG ¶ 2(d) are as follows:

(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.

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving 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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 was out of work for two years, in part, because she was recuperating from a surgery. However, she lost her job, primarily, because of a DUI conviction that resulted in the loss of her license for a year, and precluded her from working in a profession that periodically requires driving. Under these circumstances, AG ¶ 20(b) does not apply.

Applicant provided no documentary evidence of actions she has taken to either resolve her delinquent debts or dispute the debts that she denied. Under these circumstances, none of the remaining mitigating conditions apply.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions and it does not warrant a favorable conclusion. I conclude that Applicant has not mitigated the security concerns.

Formal Findings

Formal findings for 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

Subparagraphs 1.i - 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph t:	For Applicant
Subparagraphs 1.u – 1.y:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge