



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 17-03247

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

07/10/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns related to unresolved delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of Case

On October 2, 2017, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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 October 21, 2017, and requested that her case be decided by an administrative judge on the written record without a hearing (Answer). On November 28, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant and received by her on December 5, 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 timely submitted a response to the FORM that I marked as Applicant's Exhibit (AE) A. Neither party objected to the submission of the exhibits. Items 1 through 8 and AE A are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on April 9, 2018.

Findings of Fact

Applicant is 57 years old and divorced. In 2014, she began working for her current employer, a federal contractor. Prior to this position, she worked for other federal contractors since 2006 and experienced several periods of unemployment in between those years. Before that, she worked for another federal agency and held a security clearance with that agency for over 20 years. She has held a security clearance since 2010. (Item 3)

In November 2015, Applicant submitted a security clearance application (SCA) for re-investigation. (Item 3) Applicant was subsequently interviewed by a government investigator in July 2016 and June 2017. During the July 2016 interview, she stated that she was a victim of identity theft since 2006 and after the Office of Personnel Management (OPM) data breach. She stated that since 2015 or 2016 she was on a payment plan with her state to pay state taxes owed from 2010 or 2011. She indicated that she was paying \$100 to \$200 per month and owed \$1,600. She attributed this debt to a period of unemployment. In reviewing her credit report, she stated that she did not recognize numerous medical bills, a telephone debt, and other debts. She denied owing money for a car loan and stated she disputed the amount. She believes some debts arose from identity theft. (Item 8; AE A)

During a June 2017 background interview, Applicant confirmed the information she discussed in her previous interview. She stated she never filed a police report regarding identity theft. She said she filed a dispute letter with the credit bureaus in August 2016 regarding debts that appeared on her credit report. She indicated that she had not followed up with that letter or further investigated the debts listed on her credit reports. She had not made arrangements to address any of those debts because she did not believe they were her responsibility, including the car loan she said she paid. She said she voluntarily returned the car after her July 2016 interview. (Item 8)

Based on credit bureau reports (CBR) from August 2017 and November 2015 and court documents, the SOR alleged 11 delinquent debts that arose between 2012 and

2017 and totaled \$29,891. (Items 4, 5, 6, 7) In her Answer, Applicant denied all 11 SOR allegations. She stated as follows:

(1.a) The alleged \$2,899 balance owed to the state for unpaid income taxes for 2010 or 2011 is incorrect and that she has been making payments on the 2013 lien;

(1.b) She did not owe the \$1,463 judgment owed to an automobile company because she was not properly served;

(1.c) She disputed the \$14,457 automobile loan with a consumer federal agency on the basis that she paid the loan and that she never saw this claim;

(1.g) She denied owing the \$573 telephone bill and disputed it with a consumer federal agency because she said she paid it.

(1.d, 1.e, 1.f, 1.h-1.k) She denied responsibility for all of these medical debts, stating that two of them were paid by hospitals, and she did not recognize the other ones. (Item 2)

Applicant did not provide documentary evidence to confirm her assertions that she was paying the 2013 tax lien, had paid any debt, or had successfully disputed any of them. 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 obligations and solvency from which to determine her current financial reliability and judgment.

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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.¹

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 describes conditions that could raise security concerns and may be disqualifying in this case. Four may potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of being unable or unwilling to meet financial obligations, which began in 2010 and continues to the present. They include a state tax lien for unpaid income taxes, a judgment and miscellaneous debts. 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 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;
- (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; 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 ongoing unresolved delinquent debts cast doubt on her current reliability and judgment. AG ¶ 20(a) does not apply. Applicant attributed her income tax problems to a period of unemployment, which may have been a circumstance beyond her control in relation to that debt. She did not provide evidence that she had attempted to responsibly manage her tax obligations prior to the state's lien being filed. She denied current responsibility for all other alleged debts. Applicant claimed her identity was stolen, but failed to provide clear evidence that she made a report to the police, or took other actions to address it. She did not provide substantiating documents from the credit bureaus showing she contacted each one about her identity being stolen and their responses. AG ¶ 20(b) provides limited mitigation for the tax lien debt. It does not apply to the other debts. There is no evidence that Applicant participated in credit or financial counseling. She failed to provide documentary evidence to show that the delinquent debts are being resolved and under control. AG ¶ 20(c) does not apply. She did not submit sufficient evidence of good-faith efforts to resolve any of the alleged debts. Nor did she submit proof that she has a payment plan with the state to resolve the 2013 tax lien, and is making payments, as asserted. There is insufficient evidence to establish mitigation under AG ¶¶ 20(d) or 20 (g).

In her Answer and response to the FORM, Applicant contended that she disputed 10 of the 11 SOR-alleged debts. Although she provided information that she filed disputes with a credit bureau in August 2016 and a federal consumer agency in December 2016, she did not submit sufficient proof that any of those debts were found not to be her responsibility or were successfully resolved through the dispute process. The evidence does not establish mitigation under AG ¶ 20(e).

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 those guidelines, but some warrant additional comment.

Applicant is a mature individual who has worked for the federal government for many years, during which time she has held security clearances. In the FORM, she was informed that the evidence she submitted in her Answer to the SOR was likely insufficient to mitigate the financial allegations. Despite that notice, she did not provide additional documentary evidence to confirm her assertions that she was resolving, had resolved, or had obtained recent and credible proof that the majority of the alleged debts were not her responsibility. 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.k:	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 access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge