



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



In the matter of:

Applicant for Security Clearance

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)
) ISCR Case No. 17-03514
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)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

05/22/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on October 7, 2016.¹ On October 20, 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 (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 adjudicative guidelines (AGs) effective within the DOD for SORs issued after June 8, 2017.

Applicant answered the SOR on November 30, 2017, admitting 17 of the allegations in the SOR and denying 9. She requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing for April 10, 2018. The hearing was convened as scheduled. The Government's Exhibits (GE's) were not available for the hearing. I

¹ Also known as a Security Clearance Application (SCA).

left the record open until April 24, 2018, for Department Counsel to provide Applicant with the GE's.² She did not object and (GE) 1 – 6 were submitted post-hearing and admitted in evidence. I granted Applicant's request to keep the record open for an additional period until May 8, 2018 to submit documents.

Applicant testified and submitted Applicant's Exhibits (AE) A – C, including a letter from Mariner Finance stating that it had taken over Personal Finance (AE A); a printout from Regency Finance (AE B); and an account statement from Mariner Finance for the period of September 2017 to April 2018 (AE C). AE B is only relevant as it relates whole person as it pertains to a debt not alleged in the SOR. Applicant provided one post-hearing document, which was a dashboard screenshot from her recently retained credit-counseling firm. (AE D)

Findings of Fact³

Applicant is 49 years old. She obtained a bachelor's degree in 2011. (Tr. 20) She was married from 1986 to 1988, and reports one daughter from that marriage, age 30. (Tr. 24) Applicant remarried in 1998 and her husband is employed, earning \$42,000 (net) per year. (Tr. 25) Applicant earns approximately \$36,000 (net) per year as a telecommunications specialist employed by a federal contractor since March 2018. She has custody of her two grandchildren, ages 9 and 10, and is raising them because her daughter is afflicted. (Tr. 25) She has been employed by federal contractors since 2011 and she reports a previous security clearance granted in 2011.

The SOR alleges a Chapter 7 bankruptcy case in 2011, and 25 delinquent debts totaling \$78,000, including debts placed for collections, and charged-off debts. Applicant admitted 17 of the alleged delinquent debts in her Answer to the SOR. The bankruptcy case resulted in the discharge of \$61,515 in unsecured debts. (GE 4, Tr. 56) Applicant testified that she filed an earlier Chapter 7 bankruptcy case in 1999, but could not remember how much was discharged in that case. (Tr. 56) The two bankruptcy cases were caused by her being irresponsible with her finances. (Tr. 68)

SOR ¶ 1.b and 1.c are delinquent student-loan debts in the amounts of \$36,679 and \$29,510, respectively, that were placed for collections. Applicant testified that she had her bank account debited for \$5.00 per month, for the last seven months, as part of an agreed upon repayment plan for her student loans. (Tr. 22) If she makes 12 consecutive payments, they will come out of delinquent status. Although the record was open for one month after the hearing, Applicant has produced no additional documentation to substantiate her plan or payments.

² Since Department Counsel's briefcase was side-tracked en route to the hearing, the record was left open for him to provide Applicant with the GE's, which had previously been provided in discovery. She had the opportunity to object to any or all of the GE's and declined to.

³ Unless stated otherwise, the source of the information in this section is Applicant's October 7, 2016 SCA. (GE 1)

The debt alleged in SOR ¶ 1.d in the amount of \$1,760 was paid off from Applicant's savings account. It was for a consumer-appliance that they purchased from a store that has gone out of business. (Tr. 27, 31) The debt alleged in SOR ¶ 1.e is a duplicate of SOR ¶ 1.d. The debt alleged at SOR ¶ 1.f is for an automobile, which Applicant still owns. (Tr. 31) She testified that she now owes \$420 instead of the \$1,093 amount alleged in the SOR, and she "intends to pay it off" but her financial situation has become overwhelming. (Tr. 34) The record was left open until May 8, 2018 for Applicant to provide evidence of payments or progress on this or any of her other debts. (Tr. 34)

Applicant testified that she did not know why her federal savings bank charged off \$1,000, as alleged in SOR ¶ 1.g. (Tr. 35) The debt at SOR ¶ 1.h is owed to a telecommunications provider, and she admits it has not been paid yet. (Tr. 64) Applicant again stated her intent to pay it. The debt alleged in SOR ¶ 1.i is for another automobile and is past due in the amount of \$1,132 owed to the original finance company. Applicant testified that it is now in good standing and a second finance company took over as the creditor. (AE A, Tr. 44) She provided no documentary evidence to show that it is in good standing. SOR ¶ 1.j is a debt for a credit card that Applicant opened. Again, she expressed her future intent to pay it. (Tr. 45) She testified that her boyfriend opened the account with T-W alleged to be delinquent in the amount of \$802 in SOR ¶ 1.k. She testified that she would provide a letter sent to the creditor disputing it, but never followed through. (Tr. 46).

SOR ¶ 1.l is a delinquent medical debt for \$459. Applicant stated that she will try to pay it. (Tr. 47) She stated the same intentions with respect to SOR ¶ 1.m, which was a credit card for a major retail store. (Tr. 48) SOR ¶¶ 1.p, 1.q, and 1.s through 1.z are delinquent medical debts that Applicant admitted owing in her answer to the SOR. She testified that she has entered into an agreement with a hospital to make monthly payments of \$400, and she has made one payment thus far. She specifically agreed to provide documentary evidence of the agreement and payments. (Tr. 39, 64) She did not do so.

Applicant's financial issues started when she took in her two grandchildren in 2015 and incurred all the expenses of raising them when her afflicted daughter could not do so. Applicant explained that her financial circumstances were overwhelming. (Tr. 51-53) This combined with Applicant's own medical expenses, and her husband's period of unemployment for two months in 2016, caused her financial delinquencies. (Tr. 54) Applicant testified that she plans to go to a debt counselor. (Tr. 54). In a post-hearing submission, she provided documentary evidence, a dashboard screenshot from Credit One Solutions, indicating that she retained that firm. (AE D) However, it is unclear what progress, if any, has been made since she just hired that firm in April 2018. She would have taken online counseling earlier in connection with her two bankruptcies.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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 risk of having to engage in illegal acts to generate funds.

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

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant admitted to most of the delinquent debts alleged in the SOR; and all of the delinquent debts are supported by her credit reports. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 problems 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 the problem is being resolved or is under control; and

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

Applicant has not resolved, or entered into a payment plan to resolve any of the alleged delinquent debts. She testified about a plan with a hospital, but provided no evidence of her putative \$400 monthly payment, let alone a continuous stream of payments. She has already filed for bankruptcy protection twice in the last 19 years, and she again has dozens of delinquencies. She had compelling family and economic circumstances that explained some of her financial problems, including her husband's short period of unemployment, and caring for her grandchildren. These were factors beyond her control. Applicant has since done very little to contact creditors and to make payment arrangements. She repeatedly expressed her intent to resolve her debts at some future date. She has not followed through with a demonstrated track record of consistent payments pursuant to installment plans with her creditors. Virtually none of her delinquent debts are now being addressed by payment plans, or otherwise resolved. Applicant has produced evidence that she has obtained financial counseling through Credit One Solutions but it is too little, too late. She has demonstrated no viable plan going forward. Applicant has not acted responsibly. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) do not apply. I am not satisfied that her delinquent debts are being resolved.

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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant's finances remain a security concern. There are no indications that Applicant's financial problems are under control. They are longstanding - going back decades to her first bankruptcy case in 1999, and continuing. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

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
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Subparagraphs 1.a - 1.z:	Against Applicant
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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.

Robert J. Kilmartin
Administrative Judge