



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04204

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

08/06/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On December 22, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have her case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on April 9, 2018. Applicant received the FORM on April 17, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and she provided no response to the FORM. The Government's evidence, identified as Items 1 through 4, is admitted into evidence without objection. The case was assigned to me on July 31, 2018.

Findings of Fact¹

Applicant is 39 years old. She graduated from high school in 1998 and took some college courses but did not obtain a degree. Applicant has been employed as a supply technician by a federal contractor since April 2007. She reports no military service and she was never married. She has two adult children. Applicant disclosed in section 26 of her Questionnaire for National Security Positions or security clearance application (SCA) that she had some financial delinquencies including a vehicle repossessed in 2016 after it broke down and she could not afford to fix it.²

In her Answer to the SOR, Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a through 1.h, which pertained to credit-card debts, medical debts and an automobile repossession. In SOR ¶ 1.a, her vehicle was repossessed after it broke down shortly after she purchased it in early 2016, and it required over \$2,000 in repairs for transmission problems. In her interview with an Office of Personnel Management (OPM) investigator in August 2017, Applicant stated she had no intention of paying this debt because the vehicle was resold by the creditor. (Item 3) SOR ¶¶ 1.g and 1.h are delinquencies resulting from co-payments owed on medical debts. (Answer) The debt alleged at SOR ¶ 1.d (an account placed for collection by a utility provider in the amount of \$9,665) was from Applicant's previous residence.

Applicant admitted the allegation in SOR ¶ 1.b (\$835 that was charged off) for an account opened in March 2006 and charged off in March 2017. (Item 4) No explanation was provided about this delinquency. SOR ¶ 1.c concerns a revolving credit-card debt that was charged off in April 2016 in the amount of \$542. (Item 4) SOR ¶¶ 1.e and 1.f are delinquent debts owed to collections attorneys for two different accounts that were opened in December 2015 and reported delinquent in 2017. (Item 4) All of the allegations in the SOR are corroborated by Applicant's credit report of August 11, 2017. She hasn't offered any documentation to explain how she incurred these debts, and how she plans to pay them.

Policies

This 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 promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.³

¹ Unless stated otherwise, the source of the information in this section is Applicant's July 31, 2017 Security Clearance Application (SCA) (Item 2), and summary of interview on August 23, 2017. (Item 3)

² Item 2.

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, 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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 othisevidence 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, rathisthan actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to 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, othissues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debts alleged in the SOR are confirmed by her credit report, answer to the SOR, and her clearance interview of August 2017. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁴ Applicant has not met that burden. None of the delinquent debts have been adequately addressed with corroborating documentation.

⁴ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

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 problem were largely beyond the person's control . . . , 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 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.

Applicant is a single mother struggling to put her children through college. Arguably, these conditions were beyond her control. However, she has not produced documentation, or furnished any explanation, with her Answer to the SOR, or in response to the FORM, to establish that she has acted responsibly under the circumstances. She has known about her financial problems and the concerns they caused to the government for at least one year since the OPM interview. Applicant has the burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances making them unlikely to recur. She has not met that burden.

None of the mitigating conditions fully apply. Applicant did not provide any details with documentary corroboration about what she did to address her SOR debts. She did not provide documentation relating to any of the SOR debts such as: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;⁵ (3)

⁵ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012

credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because she did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was crucial for her to provide credible documentary evidence of resolution of the debts in the SOR. (FORM at 2 - 3) Applicant provided no documentary evidence that she paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts. She did not describe financial counseling or provide her budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information. The FORM informed Applicant that she had 30 days from the receipt of the FORM “in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely” on the evidence set forth in this FORM. (FORM at 3)

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 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

at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

addressed under those guidelines. Most importantly, Applicant has not met her burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. 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 to 1.h:	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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge