



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04235

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

07/02/2018

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

Applicant submitted a security clearance application (SCA) on May 28, 2015. On February 8, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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) implemented by DOD on June 8, 2017.

Applicant answered the SOR on February 18, 2018, admitting all of the SOR allegations with explanations and electing to have her case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on March 22, 2018. Applicant received the FORM on March 28, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation.

Applicant provided a two-page response to the FORM on April 7, 2018. Attached to her response were the following: a cashier's check for \$350 to a bank; a DD-214; an acceptance letter from an online university; tax transcripts from the IRS from tax years (TY) 2011 and 2012; tax transcripts from a state department of taxation for TY 2011 and 2012; and a February 15, 2018 letter from the bank-creditor agreeing to a payment plan of \$350 per month for six months. The Government's evidence, identified as Items 1 through 6, is admitted into evidence without objection. The case was assigned to me on June 19, 2018.

Findings of Fact¹

Applicant is 52 years old. She married in 1984 and obtained her bachelor's degree online in 2006. Applicant has been employed as a principal consultant for a federal contractor since June 2013 aboard a military installation. Previously, she served as a computer developer for another federal contractor from 2005 to 2012. Applicant has two adult children and she served honorably in the U.S. Navy from 1984 – 1988. Applicant reports a previous top secret clearance from 1984, and a secret from 2000.

Applicant disclosed her failure to file his federal and state tax returns and pay federal and state taxes for TY 2011 and 2012, in section 26 of her SCA. She claimed that she was “distracted by instability of employment” in failing to file the 2011 tax returns. She “transitioned jobs and misplaced the W2s” in respect to the 2012 tax returns. She claimed “I’m in the process of trying to get W2s from my previous employers in order to file the taxes.”² Applicant stated “I have not satisfied this yet, because I am in the process of trying to get copies of my W2s . . .”³ In her response to the SOR, Applicant made admissions to all three allegations contained in the SOR.⁴ She attached IRS transcripts for TY 2011 and 2012, showing that her returns are filed and she currently has no balance owing. The TY 2011 transcript reflects it was submitted on September 14, 2017, on the same date as her state returns, and the TY 2012 transcript reflects her return was submitted on September 16, 2014. Adjusted gross income (AGI) for TY 2011 was \$60,298 and for TY 2012, her AGI was \$65,003. Her responses to the SOR are adopted as findings of fact.

In response to SOR ¶ 1.c, an auto-loan account that was charged off, Applicant responded that she has entered an agreement and she will be making payments of \$350 per month on this debt. She attached a cashier's check for \$350 dated April 9, 2018, to her response to the FORM to confirm one payment pursuant to the plan. The credit report reflects that her auto loan was opened in 2013, and it has been delinquent

¹ Unless stated otherwise, the source of the information in this section is Applicant's May 28, 2015 security clearance application (SCA) and the summary of her security clearance interview on July 13, 2015, verified in her responses to interrogatories signed on November 26, 2017.

² Item 3.

³ Item 3, p. 33.

⁴ Item 2.

since May 2015.⁵ Applicant also attached a letter from the creditor (bank) agreeing to this payment plan of \$350 per month for six months.

At the time of her May 2015 SCA, Applicant stated she was in a rehabilitation program for delinquent student loans (not alleged in the SOR), paying \$309 each month to bring the loans current. In July 2015, she told the OPM interviewer about numerous student loans that were in a delinquent status.⁶ She also told the clearance interviewer that she had attended a nine week financial course through her church, but she had no other financial counseling or debt consolidation advisor. She provided no character references or evidence of community involvement.

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, 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, Appendix A, ¶ 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, Appendix A, ¶ 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."

⁵ Item 6.

⁶ Item 5.

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.

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.”

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, other issues 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

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;
- (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's SOR debts are confirmed by her credit reports, clearance interview, and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁷ Applicant has not met that burden.

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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 has longstanding financial problems going back to 2015 when she had delinquent student loans. She provided no explanation for her inability or unwillingness to timely file her tax returns and pay her delinquent debts. Arguably, her transitions between contracts and employers were due to conditions that were beyond her control. Nevertheless, she has produced no relevant and responsive documentation, demonstrating that she acted responsibly under the circumstances. She filed her TY 2011 federal and state tax returns about five years late in September 2017. She filed her TY 2012 federal tax return about one year late, without adequate explanation for the delay. Transitions between contracts and instability are routine for defense contractors, and inability to locate W2s is not availing. She has only made one payment on her repayment plan with the bank. This is insufficient to establish a track record of consistent payments. Applicant has not met her burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred

⁷ 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).

under circumstances making them unlikely to recur. The three SOR allegations have not been resolved. None of the mitigating conditions enumerated above apply.

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, Appendix A, ¶ 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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Most importantly, Applicant has not addressed the specific allegations in the SOR and 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. She only recently resolved her tax issues, and she only produced evidence of one payment on her auto loan repayment plan. This is not sufficient time to demonstrate a track record of continuous payments in compliance with her plan on SOR ¶ 1.c. The record evidence leaves me with 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

Subparagraphs 1.a through 1.c: Against Applicant

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