



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



In the matter of:

ISCR Case No. 17-04301

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

10/11/2018

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 13, 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 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017 (AG).

Applicant answered the SOR on March 5, 2018. She elected 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 May 15, 2018. The evidence

included in the FORM is identified as Items 3-6 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on April 9, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to any of the Government's evidence. She submitted one document, which was admitted as exhibit (AE) A. Items 3-6 are also admitted. The case was assigned to me on September 18, 2018.

Findings of Fact

Applicant admitted some allegations in the SOR with explanations, and denied the remaining allegations. Her admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 31 years old. She has worked for a federal contractor as a project coordinator since August 2016. She is single, never married, with one child. She is a high school graduate and has taken some college courses.¹

The SOR alleged Applicant owed on 45 delinquent collection accounts and a judgment in the total amount of approximately \$14,000. Forty of the debts are for delinquent medical expenses. Many of those medical debts were for small amounts (several debts under \$25). The allegations are supported by credit reports from October 2016 and November 2017, Applicant's statement to a defense investigator in August 2017, and Applicant's SOR admissions.²

In Applicant's August 2017 statement to a defense investigator, she explained that the reason for her financial difficulties stemmed from being the only wage earner for her household. It was unclear how many lived in her household, but it at least included herself, her child, and a cohabitant. The record contains no evidence of financial counseling by Applicant. Other than a March 2018 credit report submitted by Applicant, the record does not contain evidence of Applicant's current financial standing. Applicant claimed in her FORM response that she recently received a \$25,000 pay increase, which she intended to use to pay her remaining debts. She did not provide documentation of this pay increase or payments.³

In addressing the SOR debts, Applicant stated in her answer that SOR ¶¶ 1.i and 1.gg were paid. Documentation from her March 2018 credit report supports the payment for SOR ¶ 1.i, but the same credit report indicates that SOR ¶ 1.gg is past due \$52 as of February 27, 2018. Applicant pointed out that several accounts were duplicated in the

¹ Item 3.

² Items 2, 4-6.

³ Item 2, 4; AE A.

SOR (¶¶ 1.i, 1.hh, 1.ii, and 1.jj). Those debts are found in favor of Applicant. For the remaining SOR debts that Applicant denied, she supported her denials by pointing out that those debts were no longer on her March 2018 credit report. She did not provide documentation showing payment of those debts. For the debts she admitted, she claimed she would pay them in the future once she completed a current payment arrangement. She did not provide documentation of any payments or payment plans for these accounts. According to her March 2018 credit report, Applicant has approximately \$57,000 in deferred student loans. In her FORM response, she stated she now has eight accounts in collection (down from 14) and the balance of those accounts is \$3,375. She failed to document what accounts those were and from where that balance came.⁴

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 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(a), 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.

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 to obtain 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

⁴ Item 2; AE A.

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 about 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 has delinquent debts that remain unpaid. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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, 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; 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.

None of these mitigating conditions fully apply. Applicant's debts are recent and remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant's position as the only income earner in her household may be considered a condition beyond her control, however, she failed to take responsible actions to address her resulting debts. I find AG ¶ 20(b) partially applies. Except for one debt, Applicant also failed to address her SOR debts through payments or establishing payment plans. Many of the debts were of minimal amounts, such as \$1 or \$9, indicating her failure to pay medical copayments. There is no evidence of financial counseling. AG ¶¶ 20(c) and 20(d) do not apply. She failed to document any disputed debts. AG ¶ 20(e) does not 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 ¶ 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 guideline 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 considered the circumstances that led to her financial difficulties. Applicant has not established a track record of financial stability.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.⁵

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 – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j – 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m – 1.gg:	Against Applicant
Subparagraphs 1.hh – 1.jj:	For Applicant
Subparagraphs 1.kk – 1.ss:	Against Applicant

⁵ I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge