



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-00503
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
For Applicant: *Pro se*

09/28/2018

Decision

HOGAN, Erin C., Administrative Judge:

On March 2, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 (AG) effective within the DOD on June 8, 2017.

On April 10, 2018, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on June 26, 2018. Applicant received the FORM on July 12, 2018. Applicant had 30 days to submit a response to the FORM. She did not submit a response to the FORM. On September 12, 2018, the FORM was forwarded to the Hearing Office and assigned to me on September 25, 2018. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 51-year-old employee of a DOD contractor since July 2014. She previously held a secret security clearance while working for a DOD contractor in 2005. She is reapplying for a security clearance. Her highest level of education is a master's degree. She is married and has three children, a son, age 31, and two daughters, ages 29 and 22. Her husband is retired from the U.S. Navy. (Item 3)

On April 13, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing. (Item 3) A subsequent background investigation revealed Applicant had five delinquent debts which make up the SOR allegations. The debts include a student loan with a balance of \$98,415 that was placed for collection (SOR ¶ 1.a: Item 4 at 3; Item 5 at 2); a student loan with a balance of \$89,131 that was placed for collection (SOR ¶ 1.b: Item 4 at 3; Item 5 at 2); a \$5,210 buying club account that was placed for collection (SOR ¶ 1.c: Item 4 at 13); a \$1,175 account that was placed for collection (SOR ¶ 1.d: Item 4 at 13); and a \$1,151 cell phone account that was placed for collection. (SOR ¶ 1.e: Item 4 at 13).

In her Response to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a, 1.b and 1.d. She denies the debts alleged in SOR ¶¶ 1.c and 1.e. The debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d are delinquent student loans. Applicant attempted to resolve this debt by applying for loan forgiveness. She also applied to different loan reduction programs which did not properly manage her loans. She has made some payments and has applied for deferments. Her last attempt to resolve the student loans was with a company that told her that they would begin repayment based on her income. She was not earning a lot of income at the time so she usually sent the company \$25 a month. She provided a receipt indicating she sent \$299 to the company on November 25, 2013. She later discovered the company was not repaying her student loans so she discontinued her agreement with the company. Applicant believes that she will be able to resolve her student loans now that she has good employment. (Item 2)

Applicant disputes the \$5,210 debt alleged in SOR ¶ 1.c because she claims the original creditor conducted predatory practices towards military families. She claims they deceived her and her husband during a demonstration. They took their information, including their credit card number stating they were under no obligation. The company began billing them each month. Applicant and her husband cancelled the payments and notified the company that they did not agree to their services. They discovered other military friends had similar experiences with the company. The company has since closed down. Applicant disputes this debt because the company fraudulently billed her for nothing. The debt is not listed on her most recent credit report. (Item 2; Item 5)

Applicant disputes the \$1,151 cell phone debt alleged in SOR ¶ 1.e. She claims she was a long-term customer of the cell phone company, but they were no longer able to provide cell phone service after 13 years. The cell phone company told Applicant they were going to disconnect the lines. When they disconnected the lines, the cell phone company continued to charge her for cell phone service. She claims she paid all of the

debt owed to the cell phone company and will not pay for a debt that she does not owe. She did not provide documentation indicating that she submitted a formal dispute of the debt either directly with the company or with the credit reporting agencies. The debt is not listed on her most recent credit report. (Item 2; Item 5)

Applicant has had two periods of unemployment. The first occurred from July 2007 to March 2008. The second occurred from January to March 2013.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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 access 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 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 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 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 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

Both disqualifying conditions apply because Applicant incurred five delinquent accounts, an approximate total of \$195,082. Of that amount, \$188,721 consists of delinquent student loans.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be

debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions 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 financial counseling service, and there are clear indications 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.

AG ¶ 20(b) applies because Applicant had two periods of unemployment which may have had an impact on her finances. However, I cannot conclude she acted responsibly under the circumstances because she has not demonstrated that she has a consistent plan to resolve her delinquent student loans. Applicant currently has

approximately \$188,721 in delinquent student loans. She has provided insufficient evidence of the steps she is taking to resolve the student loan accounts.

AG ¶ 20(e) applies with respect to the debts alleged in SOR ¶¶ 1.c and 1.e. Although Applicant did not provide proof that she formally disputed the debts, her explanation is credible and the debts are not listed on her most recent credit report.

The security concerns raised about Applicant's financial situation are not mitigated because of the unresolved student loan debt.

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 Applicant's employment history to include her two periods of unemployment. Applicant has not demonstrated that she has a consistent plan to resolve her delinquent student loans. The security concerns raised under financial considerations are not mitigated.

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.b, and 1.d:	Against Applicant
Subparagraphs 1.c and 1.e:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge