



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



In the matter of:)
)
) ISCR Case No. 18-00778
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin Esq., Department Counsel
For Applicant: *Pro se*

11/14/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On April 4, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 (AG) effective on June 8, 2017.

Applicant answered the SOR on May 25, 2018, and requested a hearing before an administrative judge. The case was assigned to me on June 28, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 5, 2018. I convened the hearing as scheduled on August 16, 2018. The Government offered exhibits (GE) 1

through 4.¹ Applicant testified and offered Applicant Exhibits (AE) A through D. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on August 24, 2018.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 28 years old. She graduated from college earning a bachelor's degree in 2012. She began a master's degree program in 2014, but later withdrew from the program. She has never been married and has no children. She is presently employed in a temporary job and has a job offer pending while the security clearance process is being completed.²

In 2015, Applicant's mother had to leave her job after she was diagnosed with a serious degenerative disease in March 2017. Applicant testified that this had an impact on her because her father became the sole source of income for the household.³

Applicant completed her security clearance application in September 2017. She was interviewed by a government investigator in November 2017. She disclosed her financial issues. The debts alleged are corroborated by Applicant's admissions, testimony, and credit reports from October 2017 and March 2018.⁴

Applicant was employed immediately after her graduation from college from December 2012, until she resigned in approximately September 2014 to pursue a master's degree. She estimated her annual salary in 2013 and 2014 was about \$32,000. She sought financial funding for her master's degree through a private loan from the university. She was advised by the university that she qualified. After being told she would receive a private loan from the university for approximately \$20,000 and after she had started classes, she was informed that there was an error, and she would not receive the funding. Only \$10,000 of the original amount could be refunded. Applicant could not afford to pay tuition and other living expenses on her income, and she withdrew from the program. Applicant was responsible for approximately \$10,000 of the loan. She moved home because she could not afford to go to school and looked for a job. She was unemployed for six to nine months and underemployed until the present. Applicant testified that she contacted the university's lender in April 2018 after receiving the SOR, but the lender wanted a lump sum payment before a payment plan would be arranged,

¹ Hearing Exhibit (HE) I is the exhibit list and II is the discovery letter.

² Tr. 15-17, 25-26.

³ Answer to SOR.

⁴ GE 1, 2, 3, 4.

which she could not afford. She disputed the lender's handling of the loan and intends to resolve it in the future when she is financially able (SOR ¶ 1.f-\$10,112).⁵

Applicant testified that she paid about \$300 a month for about a year and a half on her federal student loans after she graduated from college and was employed (SOR ¶¶ 1.g-\$14,210 and 1.h-\$17,142). She had the loans deferred for a period when she was going to attend graduate school. When she withdrew from graduate school, her loans became due in October 2014. She testified she talked to the lenders at the time, but she did not communicate with them since. The loans were deferred for a period due to her insufficient income, and she was advised that she could participate in an income-base repayment plan, but she failed to follow through when the deferment ended. She believed the loans were placed in default status in 2016.⁶

In May 2018, Applicant agreed to participate in a rehabilitation program for her federal student loans (combined balance-\$40,525). She agreed to pay \$5 a month for nine months until April 2019. Once this rehabilitation program is completed a new monthly payment plan will be established. At the time of the hearing, four monthly payments of \$5 had been made.⁷

In 2015, Applicant was underemployed and earned less than \$2,000 during the tax year. Based on the type of earnings, she was required to file a tax return, despite her low income. She was unaware of this requirement and neglected to timely correct her mistake. She has since done so. She filed her 2015 tax return in May 2018 and paid the amount she owed.⁸

The debt in SOR ¶ 1.b (\$72) is for a cell phone account Applicant opened in 2014. She testified that she canceled the account before service started; was told she would not have to pay a bill; she received a bill, but never disputed or paid it. Applicant provided a receipt that she paid half the bill and testified she paid made the final payment in May 2018. The debt is resolved.⁹

Applicant opened an account with a telephone provider in 2013 (SOR ¶ 1.c-\$790). She testified she disputed the bill when she believed the provider was adding fees she had not previously agreed to. The bill got more expensive and she could not pay it.¹⁰ The debt is not resolved.

⁵ Tr. 17-26, 54-56.

⁶ Tr. 26-35.

⁷ Tr. 26-35; Answer to SOR; AE B.

⁸ Tr. 35-41; AE A. Applicant provided copies of subsequent tax years that returns were filed.

⁹ Tr. 41-46; Answer to SOR.

¹⁰ Tr. 46-51.

Applicant incurred the debt in SOR ¶ 1.d (\$514) in 2014, owed to a pet hospital for the care of her dog. The debt in SOR ¶ 1.e (\$103) is a medical debt for laboratory tests for her incurred in approximately 2016. The debts are not paid or resolved.¹¹

Applicant testified that in 2014 she was issued a credit card by her employer (SOR ¶ 1.i-\$1,360). She said she was told that she would be reimbursed for certain expenses, but was not. Some of the expenses on the credit card were for personal use. She said she has not made a payment since the account was transferred to a collection account. She contacted the current creditor and it wanted a lump sum payment, which she cannot afford. The debt is unresolved.¹²

The debt in SOR ¶ 1.j-\$733 is for an apartment Applicant rented when she started graduate school. When she withdrew from school, she gave the landlord notice, but she could not afford to pay what she owed. She contacted the creditor about a settlement agreement, but she could not afford to pay it. It is unresolved.¹³

In May 2018, Applicant sought financial counseling from her credit union, which offered to assist her in resolving the delinquent debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, 1.i and 1.j, but it cannot start the process until she is gainfully employed with more income than she currently earns.¹⁴ Applicant testified that she intended to develop a budget. She explained that her financial problems are due to insufficient income. She is living at home and contributes about \$100 to \$250 a month to the household. She has about \$25 in savings and no other assets. She does not have credit cards. At her current job, she earns about \$5 an hour and tips. She does not have health insurance. She intends to pay her debts when she has the resources to do so.¹⁵

A character letter from a friend, who has known Applicant since 2014, stated that she is patriotic, loyal, and trustworthy and has an outstanding work ethic.¹⁶

Policies

When evaluating an applicant's national security eligibility, 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 used in evaluating an applicant's eligibility for access to classified information.

¹¹ Tr. 51-54.

¹² Tr. 56-59.

¹³ Tr. 59-60.

¹⁴ Answer to SOR.

¹⁵ Tr. 61-65.

¹⁶ AE D.

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. Directive ¶ E3.1.15 states 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.

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 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent federal and private student loans and other unpaid debts owed since about 2014 that she is unable to pay or resolve. 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 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; and
- (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 filed her delinquent 2015 Federal income tax return, as alleged in SOR . She paid the debt owed in SOR 1.b. AG ¶ 20(d) applies to these allegations.

Applicant continues to owe the debts in the remaining allegations of the SOR. She attributed her financial problems to insufficient income. This situation began when she left her job in 2014 to pursue an advanced degree. After starting the program, her financial funding was withdrawn, apparently due to an error. She was left with a partial loan, which was insufficient for her to continue her program. This caused her to terminate her lease and return home. Her student loans, which were deferred became delinquent. Applicant has been underemployed since 2014. She is unable to pay her delinquent debts and AG ¶ 20(a) cannot be applied.

As explained above, Applicant's financial problems were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. It has been almost four years since Applicant left full-time employment and decided to go back to school. She has had a series of low paying jobs. She admitted she did not responsibly manage her student loans. Since receiving the SOR, she has contacted some creditors in an attempt to resolve her debts, but she is unable to meet their proposals. Some of Applicant's debts are small, but only one has been paid. She recently started a rehabilitation program for her federal student loans. This did not occur until after receipt of the SOR. She has made four \$5 payments of the nine required payments. Although, the circumstances she was confronted with impacted her finances, the evidence is insufficient to fully apply AG ¶ 20(b) as most of Applicant's efforts occurred after she received the SOR, and there is minimal evidence she has acted responsibly. AG ¶ 20(b) has some application, but it is insufficient to fully mitigate the issues raised under this guideline.

Applicant sought financial counseling after receiving the SOR. At this juncture the financial counselor cannot assist Applicant until she has more income. There are no clear indications that the problem is under control. AG ¶ 20(c) has minimal application.

Applicant indicated she disputed the validity and legitimacy of the amounts owed on certain debts and intended to dispute her private student loan. However, she did not provide evidence of actions she has taken to resolve her claims. 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 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 is a college-educated 28-year-old woman. She is unable to pay her delinquent debts and recently began a rehabilitation program for federal student loans. It was not until after she received the SOR that she began to take any action. Although she stated that she intends to resolve her delinquent debts in the future, at this juncture, she has an unreliable financial track record. Applicant's conduct raises questions about her judgment, reliability, and trustworthiness. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate 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-1.b:	For Applicant
Subparagraphs 1.c-1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge