



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



In the matter of:)
)
) ISCR Case No. 14-04248
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On October 17, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 (AG).

Applicant answered the SOR on November 15, 2014, and 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 February 5, 2015. The evidence

included in the FORM is identified as Items 1-13 and is admitted into the record. The FORM was mailed to Applicant, who received it on February 25, 2015. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted Item 14, which was admitted into the record without objection. The case was assigned to me on April 27, 2015.

Findings of Fact

In Applicant's answer to the SOR, she admitted 39 debts and denied four (SOR ¶¶ 1.o, 1.ff, 1.ii, and 1.oo). The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.¹

Applicant is 57 years old. She is twice divorced, the most recent in August 2008. She has two adult children. Two other children are deceased, one due to a medical reason and one caused by an accident. She has a high school diploma and has taken some college courses. She has no military experience, but held a security clearance when she worked for a different federal agency.²

The SOR lists 43 delinquent debts totaling approximately \$22,276. The debts include five judgments, 36 collection accounts, and one charged-off account. She also admitted in her security clearance application to owing over \$20,000 in delinquent federal taxes for several tax years.³ The debts are supported by credit reports from February 2002, January 2014, and February 2015, court records, and by Applicant's interview with a defense investigator in January 2014.⁴

Applicant explained that her financial difficulties arose as a result of several circumstances in the early 2000s. No specific date is stated in the record, but her oldest son died of a medical condition leaving her with extensive medical debts. This led to her filing for Chapter 7 bankruptcy protection in approximately 2000. Several years later, her youngest son was accidentally killed and she paid his funeral expenses. At about the same time, her second husband left her. He left behind unpaid taxes and other joint debt.⁵

¹ Item 3.

² Items 4, 14.

³ Since the nonpayment of federal taxes was not specifically alleged in the SOR, I will not consider this evidence as disqualifying conduct. I will consider the evidence for determining the applicability of any mitigating circumstances and when I weigh the whole-person factors. See Item 4.

⁴ Items 4-13.

⁵ Item 14.

The status of the debts is as follows:

SOR ¶¶ 1.a - 1.e (Judgments for \$1,323; \$300; \$727.10⁶; \$981; \$2,254):

Applicant submitted documented evidence that she satisfied the judgments listed in SOR ¶¶ 1.d and 1.e, and has made three payments totaling \$400 toward the judgment listed in SOR ¶ 1.c. These debts are resolved or being resolved. She claims to have set up a payment plan to satisfy the judgment listed in SOR ¶ 1.a starting in December 2014, but provided no proof of payment. She also failed to submit proof that she was making payments on the judgment listed in SOR ¶ 1.b. These two debts are unresolved.⁷

SOR ¶¶ 1.f – 1.qq (Collection accounts and a charged-off account for \$487; \$483; \$165; \$182; \$586; \$243; \$764; \$484; \$105; \$643; \$263; \$57; \$36; \$34; \$54; \$577; \$37; \$74; \$78; \$109; \$728; \$254; \$479; \$755; \$176; \$140; \$693; \$1,175; \$275; \$1,380; \$123; \$645; \$546; \$755; \$1,654; \$653; \$299; \$500):

SOR ¶¶ 1.cc and 1.mm are duplicate accounts. SOR ¶ 1.mm is resolved in favor of Applicant. She provided documentation showing that SOR ¶ 1.ff was paid. This debt is resolved. For the remaining debts, she has contacted many of the creditors to confirm balances and establish payment plans; however, she failed to provide documentation of any established payment plans or proof of payment for these debts. She also failed to provide documentation supporting her disputes of SOR ¶¶ 1.o, 1.ll, and 1.oo. These debts are unresolved.⁸

Applicant did not provide any information about her current financial status or a budget, other than her statement that she lives “paycheck to paycheck.” There is no evidence that she sought financial counseling.⁹

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.

⁶ Department Counsel amended the original SOR ¶1.c to change the amount alleged from \$72,710 to \$727.10. See FORM, p. 3.

⁷ Items 3, 4-9, 10-12, 14.

⁸ Items 3, 10-12, 14.

⁹ Item 14.

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 access to classified information will be resolved in favor of 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 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 Executive Order 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both the 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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 debts 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's debts are recent and remain unresolved. She did not provide sufficient evidence to show that financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented evidence that some debts were due to circumstances beyond her control. For this mitigating condition to apply, she must also show responsible action toward resolving the debts. She resolved or is resolving three of the five judgments, however, beyond that; she has done little to resolve the remaining

debts. AG ¶ 20(c) and AG ¶ 20(d) do not apply, except as to SOR ¶¶ 1.c to 1.e., and 1.ff. She also failed to document her dispute of SOR ¶¶ 1.o, 1.ll, and 1.oo. AG ¶ 20(e) does not apply, except as to SOR ¶ 1.mm.

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(a):

- (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 tragic circumstances Applicant has experienced in her personal life over the years. Unfortunately, she failed to show 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.

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:	Against Applicant
Subparagraphs 1.c – 1.e:	For Applicant
Subparagraphs 1.f – 1.ee:	Against Applicant
Subparagraph 1.ff:	For Applicant
Subparagraphs 1.gg – 1.ll:	Against Applicant

Subparagraph 1.mm:
Subparagraphs 1.nn – 1.qq:

For Applicant
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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge