



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04416
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esquire
For Applicant: *Pro se*

03/04/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On November 14, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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 September 1, 2006.

In a response dated December 11, 2014, Applicant admitted five of the allegations raised under Guideline F and denied all allegations raised under Guideline E. She also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The matter was set as ready to proceed on September 18, 2015. I was assigned the case on October 28, 2015. DOHA issued a notice of hearing on November 2, 2015, setting the hearing for December 1, 2015. The hearing was convened as scheduled.

The Government offered four documents, which were accepted without objection as exhibits (Exs.) 1-4. Applicant offered testimony, but no documents. The transcript (Tr.) was received on December 9, 2015. The record was then closed. After review of the record as a whole, I find that Applicant mitigated personal conduct security concerns, but failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 40-year-old administrative assistant who has worked in the same position for eight years. She has taken some college classes and is a well-regarded employee. She is married and has three children. She has not received financial counseling. Applicant was diagnosed with Multiple Sclerosis (MS) in 2004, a condition that quickly added to some growing financial distress and ultimately to a 2005 Chapter 7 bankruptcy petition, discussed below. Little more was presented regarding her personal life or finances. The SOR sets forth numerous allegations regarding financial issues (1.a-1.r).

Allegations 1.a-1.b cite to Applicant's failure to timely file both Federal and state tax returns for tax year 2013. She was issued W-2 Forms which were incomplete. (Tr. 16) The mistake was discovered after she tendered her tax materials to her tax preparer. She made arrangements to get amended forms for the tax preparer, yet the returns were still filed late. No written documentation was introduced regarding the preparer or these efforts. (Tr. 25) Applicant testified she is in repayment on her debt to the state. (Tr. 16-18) Applicant did not provide copies of either the inaccurate W-2 Forms, documentary evidence of the eventual filing of Federal and state returns for 2013, or tangible proof of a repayment plan.

Allegations 1.c-1.p. relate to delinquent account balances ranging from \$94 to \$3,731, and amounting to just under \$12,000. Applicant produced a document indicating the debt at 1.h for \$335 was recently paid. (Tr. 41) She believes that the \$2,480 owed a hospital noted at 1.d is related to an accident in which her car was rear-ended and she required medical care. (Tr. 42) Applicant gave the provider the claim adjuster's contact information, but Applicant has not heard more from either. (Tr. 43)

No action was shown with regard to the other debts at issue. No accounts have been formally disputed. Disagreements she may have about some of the accounts or balances (e.g., 1.o discussed at Tr. 23-24) were not substantiated by documentary evidence. Applicant testified that she has addressed or paid the debts at 1.d (Tr. 21) and 1.h (Tr. 21-22), but no documentary evidence was presented showing this was the case. She is unable to identify whether any of the remaining debts noted are related to her medical needs. (Tr. 44)

Allegation 1.q concerns a 2005 voluntary petition for Chapter 7 bankruptcy that was ultimately discharged in Applicant's favor. On her March 2014 security clearance application (SCA), Applicant denied having had any debts or accounts turned over to a collection agency, suspended, charged off, or cancelled in the preceding seven years,

despite the above referenced delinquent debts. Any argument that the debts now at issue are older than the seven-year time frame noted in the SCA was not presented with documentary support. Only credit reports from 2014 and 2015 reflect the accounts at issue. No documentary evidence was offered showing any of the accounts at issue should have been dismissed in bankruptcy in 2005, nor was any documentation related to the bankruptcy petition presented.

Applicant recently was granted a \$7,000 loan to use to address her delinquent debts. She stated that she paid the debt at 1.h, discussed above, and some of her hospital bills, including high bills for MRI co-payments. (Tr. 31, 39) A single MRI co-payment can be as high as \$1,000 to \$1,250 under her insurance plan. (Tr. 39) When the total loan balance is used, Applicant expects a remaining delinquent debt balance of just under \$5,000.

The final allegation at issue is 1.r for approximately \$2,444. It represents an adverse judgment from 2005. (Tr. 26-27) Learning of this judgment helped Applicant decide to file for bankruptcy in 2005. It is no longer shown on her credit reports.

Applicant's neglect of the debts at issue was not part of an attempt to deceive or hope they would be overlooked. She genuinely was flummoxed as to how to approach her debt, and was fearful that loans and loan programs were either fraudulent or unhelpful. Not having had financial counseling, she is also unaware as to how to read a credit report. (Tr. 34) She testified credibly that she has spoken with multiple creditors by telephone, but conceded she had no documentation to evidence these efforts. She is presently on time with her current and ongoing bills, but, in light of her continuous medical obligations, she basically lives paycheck to paycheck. (Tr. 37) Her eldest daughter now lives with Applicant's mother and works while she finishes college, which frees up some money for Applicant.

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(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. Likewise, I have not drawn 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 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 the applicant may deliberately or inadvertently fail to safeguard 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence purporting to show Applicant was delinquent on multiple debts and late in timely filing Federal and state tax returns. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts,

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

In 2004, Applicant had some debt which slowly grew the following year after she was diagnosed with MS. She filed for, and was discharged from, Chapter 7 bankruptcy in 2005. A decade later, it was noted she had about \$14,000 in new delinquent debt and that she belatedly filed her Federal and state tax returns in 2013.

Applicant testified that some of her debt that was based on circumstances beyond her control, such as her declining health and large medical co-payments. She showed she has paid one debt and, through a loan, now has the resources to satisfy about half of the debt at issue. Lacking financial counseling or an understanding as to how she should best organize and address her delinquent debts, however, those debts remain mostly unaddressed. Therefore, it cannot be concluded that she acted reasonably in the face of her financial distress or that there has been clear progress on addressing her delinquent debt. As for her delinquent tax filings, she testified that they were ultimately filed. However, she provided no documentary evidence to that effect. In short, lacking financial counseling or assistance, Applicant has made scant progress on the issues set forth in the SOR. None of the financial considerations mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, where the significance of conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations is defined ([p]ersonal conduct can raise questions about an individual's reliability, trustworthiness and ability to protect

classified information). Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant failed to enumerate the delinquent debts attributed to her in her recent credit reports. The SOR alleges that her failure to provide such details in the SCA reflects dishonesty and willful falsification. I disagree.

There is no evidence that Applicant deliberately tried to conceal or defraud in completing her SCA. Rather, her testimony strengthens her position that she misunderstood what was delinquent and what was not. For example, she correctly noted that the debt at 1.r was covered by her 2005 bankruptcy. Consequently she failed to discern whether any of the other accounts at issue were previously addressed or similarly beyond the scope of the SCA question. Lacking evidence of an intent to deceive, no personal conduct disqualifying condition is raised.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 incorporated my comments under the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a highly credible 40-year-old administrative assistant who has worked in the same position for eight years. Married with three children, she has attended some college. She has not received financial counseling. Applicant was diagnosed with MS in 2004, which led to her needing to seek bankruptcy protection to address her delinquent debts. She also failed to timely file Federal and state tax returns in 2003. Although she testified that those returns were ultimately filed, no evidence of such filing was offered.

Applicant is a superior administrative assistance, but she has serious issues with addressing home economics and personal finance. Her disorganization in this area continues to present, where she recently was given a \$7,000 loan, but only a small amount has thus far been expended on one of the debts at issue.

This process expects that an applicant employ a reasonable strategy or plan to address one's delinquent debts. It then requires documentary evidence that such a plan

has been successfully implemented. Applicant has failed to do that here. To her credit, however, I find no evidence Applicant intended to commit fraud or falsity in completing her SCA. Under these facts, I find that Applicant has not mitigated financial considerations security concerns, but has mitigated personal conduct security concerns.

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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.p:	Against Applicant
Subparagraph 1.q-1.r:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For 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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge