



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



In the matter of:)	
)	
)	ISCR Case No. 14-06293
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On March 4, 2015, 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 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 effective within the DOD for SORs issued after September 1, 2006.

On April 1, 2015, Applicant answered the SOR, and she elected to have her case decided on the written record in lieu of a hearing. On August 5, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on September 23, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant objected to certain parts of Item 6 and provided additional corrected information. Government Items 4 through 8 are admitted into evidence, with the noted changes to Item 6. Applicant provided additional documents that are marked as Applicant Exhibits (AE) 1 through 13, and were admitted into evidence without objection. The case was assigned to me on October 27, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. She married in 1997 and has two sons ages 16 and 7. She has been employed with the same federal contractor since October 2008, but experienced a temporary lay-off from March 2011 to June 2011. During this period, she received unemployment compensation. From 2003 she has been consistently employed.¹

The SOR alleges 13 delinquent or past-due debts. Ten of the debts were in collection or charged-off status (SOR ¶¶ 1.a through 1.d, 1.f, 1.h, 1.i, 1.j, and 1.l through 1.m; cumulative total of \$17,680). SOR ¶ 1.e (balance \$19,328) was past due \$977; SOR ¶ 1.g (\$1,501) was past due \$343, and SOR ¶ 1.k (\$6,041) was past due \$590. Applicant paid through an installment plan the 2011 tax debt in SOR ¶ 1.m (\$2,200). In August 2015, she paid the debt in SOR ¶ 1.h (\$489).²

Applicant attributed her financial difficulties to a period from March to June 2011 when she was temporarily laid off due to a government shutdown; her younger son's medical issues; and a period of separation with her husband from June 2011 to November 2011.³

In January 2015, Applicant filed Chapter 7 bankruptcy and included debts listed in the SOR. Under Schedule F-Creditors holding unsecured nonpriority claims, she listed 25 claimants with accounts totaling approximately \$63,997. This included a student loan, several personal loans from a credit union and bank, medical debts, a veterinarian bill, insurance debt, pest control services, and the deficiency owed on a repossessed vehicle.

As required for bankruptcy filings, Applicant completed credit counseling. She stated that she gained valuable insight into managing her finances. She also indicated

¹ Item 4.

² AE 13.

³ AE 1 and 2.

that she took a 13-week course with a nationally recognized financial education program. It is noted from information in the bankruptcy petition that Applicant and her husband's joint income in 2013 was \$83,347, and it increased to \$97,673 in 2014. They currently own two vehicles with loans of \$7,781 and \$22,842. Applicant's debts were discharged through bankruptcy in June 2015.

Applicant provided information that her monthly rent was reduced from \$1,500 to \$996. She also provided information to show as of September 2015, her average balance in her checking account is \$3,364, and her savings account average balance is \$1,198. She indicated that she is current on all of her accounts and has not added new debts.⁴

Applicant provided character letters. In them she is described as hardworking, diligent, determined, organized, knowledgeable, dependable, professional, trustworthy, and honest. She is actively involved in her church and community. Her performance appraisals rate her in various categories as "fully successful," "highly successful," or "exceptional." Applicant has earned various awards and recognitions.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (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.

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 avoided drawing inferences grounded on mere speculation or conjecture.

⁴ Items 5, 8, and 14.

⁵ AE 10, 11, and 12.

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 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 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

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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 the following under AG ¶ 19:

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

Applicant had 13 delinquent debts that were in collection, charged off, or past due that were unresolved. Applicant was unable or unwilling to satisfy her debts in the past. The above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 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 admitted all of the SOR debts. Through an installment agreement, she resolved the tax debt owed for tax year 2011 (SOR ¶ 1.m), and in August 2015 she paid the debt in SOR ¶ 1.h. The remaining debts and others not alleged totaling approximately \$63,000 were discharged through Chapter 7 bankruptcy in June 2015.

Applicant indicated that her financial problems were the result of being temporarily laid off in 2011 for several months, her son's health issues, and her marital separation in 2011. These were conditions beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not provide information of what responsible actions she took to resolve her debts prior to filing bankruptcy. Applicant and her husband's income increased from 2013 to 2014, yet she did not pay her creditors. Having her debts resolved through bankruptcy is a legal recourse to allow her to start over. However, Applicant failed to provide sufficient information to show what tangible actions she took from 2011 when she began to experience financial difficulties until she filed bankruptcy. She resumed employment in 2011 and has been employed steadily. She and her husband reconciled in November 2011, thereby reducing the financial impact of the previous separation. I find AG ¶ 20(b) partially applies. Applicant has not provided sufficient evidence to conclude that her financial problem were the result of unique circumstances that are unlikely to recur. I find Ag ¶ 20(a) does not apply.

Applicant received financial counseling as part of her bankruptcy and also participated in a 13-week financial education course. It has only been five months since Applicant had her debts discharged. There is no track record of financial stability or of her living within her means. It is too early to conclude that there are clear indications that she will be fiscally responsible in the future. AG ¶ 20(c) partially applies. Discharge of delinquent debts through bankruptcy does not constitute a good-faith effort to repay overdue creditors. AG ¶ 20(d) does not apply. Applicant did not dispute any of the alleged debts, so AG ¶ 20(e) is not applicable.

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 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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 37 years old. She has been steadily employed except for a period in 2011. She and her husband were separated and reconciled the same year. Applicant experienced financial difficulties during this time. She did not sufficiently articulate what actions she took during and after this time to ensure her debts were paid. Although she stated she has participated in financial education, it is too soon to decide if she will adhere to a fiscally responsible strategy. With a clean financial slate after her debts were discharged, she may in time be able to show a consistent reliable track record of financial stability, but at this juncture it is too soon to make that definitive determination. Her financial problems raise questions about her trustworthiness, reliability, and good judgment. 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.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.l	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge