



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



In the matter of:)
)
) ISCR Case No. 15-02094
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

06/06/2016

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 September 29, 2015, the Department of Defense (DOD) 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.

Applicant answered the SOR on November 3, 2015, and elected to have her case decided on the written record. On December 20, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on January 4, 2016. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government evidence and did not offer any additional information. The Government's documents identified as Items 1 through 5 are admitted into evidence. The case was assigned to me on May 2, 2016.

Findings of Fact

Applicant admitted all of the allegations in the SOR, except she failed to respond to ¶ 1.d; therefore it will be considered a denial. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 65 years old. She is a high school graduate. She married in 1979 and divorced in 1994. She has two adult children ages 36 and 33. She has been employed by a federal contractor since 1995.¹

The SOR alleged 11 delinquent debts totaling over \$41,000, of mostly consumer debt. The debts are included in credit bureau reports from August 2012 and February 2015. Applicant admitted she owed the debts alleged in the SOR, except she noted that the debt in SOR ¶ 1.h "has been taken as a write-off per [the creditor] on 11/17/2015." She further noted that she no longer owes the balance on the debt and that she did not agree with it. She did not provide supporting documentation to substantiate her position.²

During Applicant's background interview by a government investigator in June 2012, she attributed her financial problems, in part, to providing financial support for her adult son and his family, while maintaining her own living expenses. She intends to resolve all of her financial problems when her son becomes more self-sufficient. She did not provide updated information regarding her family situation. She advised the government investigator that she would continue to make partial payments on all her outstanding accounts. She did not provide evidence of partial payments she may have made on any of the alleged debts.³

In Applicant's answer to the SOR, she explained about six years ago she contacted a debt-reduction company to help resolve her delinquent debts. The company helped to some degree, and she was able to pay a reduced balance for some of her debts. She stated that she will try and get these debts paid during the next few years. She further stated that she is not proud of her delinquent debts, but they would not interfere with her ability to protect national security or her loyalty to the United States.⁴

¹ Item 2.

² Items 1, 4, 5.

³ Item 3.

⁴ Items 1, 3.

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.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁵

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has 11 delinquent debts that total approximately \$41,000. She began accruing the majority of them in approximately 2010. The delinquent debts are unpaid and unresolved. 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;

⁵ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 failed to provide evidence that any of the debts in the SOR have been paid or resolved, despite being put on notice in 2012 during her background interview that said delinquencies created security concerns. There is insufficient evidence to conclude that her financial problems are unlikely to recur. Her failure to timely address her delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

In 2012, when Applicant was interviewed by a government investigator, she indicated her financial problems were due to providing support for her son and his family and paying her own living expenses. She did not provide amplifying information about her son and his inability to be self-sufficient. She did not provide updated information from 2012 regarding the state of her finances. Due to the sparse information provided, I will consider Applicant's financial assistance for her son and his family to be somewhat beyond her control. However, for the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. It appears about six years ago she engaged the assistance of a debt consolidation company to help reduce her debt. Although she explained it helped she failed to specifically address the delinquent debts alleged in the SOR or how the company assisted in the resolution of her financial problems. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that she received financial counseling. There is insufficient evidence to conclude she made good-faith payments to creditors or otherwise resolved her delinquent debts. There are not clear indications that Applicant's financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant said she disagreed with the debt in SOR ¶ 1.h, and it was written-off by the creditor, so she no longer owed the balance. She did not provide documented proof

that the debt is paid, resolved, or that she is no longer responsible for it. 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(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 65 years old. She has worked for a federal contractor since 1995. She attributed her financial difficulties to providing support for her adult son and his family and paying her own living expenses. She did not provide amplifying information about her family situation. She has been aware since her background interview in 2012 that her financial delinquencies were raising security concerns. She has failed to meet her burden of persuasion. Applicant does not have a track record of financial stability. 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.k:	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