



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



In the matter of:)
)
) ISCR Case No. 14-03856
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/16/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but she did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 10, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 22, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

22, 2015, scheduling the hearing for February 12, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on February 23, 2015.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified, but she did not submit any documentary evidence. The record was held open for Applicant to submit additional information. She did not submit anything.

Motion to Amend the SOR

Department Counsel moved to amend the SOR by changing the date in SOR ¶ 2.a from "March 24, 2013," to "March 24, 2014." The motion was granted without objection.

Findings of Fact

Applicant is 55 years old. She is being sponsored for a security clearance by a defense contractor. She worked for the defense contractor from August 2011 until she was laid off in January 2015. She is eligible to be rehired if she receives her security clearance. She is a high school graduate. She is married with an adult child, a teenage child, and an adult stepchild.¹

Applicant worked for a company from 2000 until she was laid off in 2010. She was unemployed from April 2010 until she was hired by the defense contractor in August 2011. Her husband developed a medical condition in 2009 or 2010 that has prevented him from working. He receives Social Security disability compensation. They were unable to pay all their bills, and several debts became delinquent.²

The SOR alleges 11 delinquent debts totaling about \$13,935. Each debt was listed on at least one credit report. The debts range in amounts from \$64 to \$5,103. Five of the debts, totaling \$1,841, are medical debts.

Applicant denied owing the medical debts (SOR ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.k). She stated that she has medical insurance, and she made all her copayments.³

SOR ¶ 1.e alleges a delinquent debt of \$5,103 to a collection company on behalf of a financial institution. Applicant admitted owing the debt, but she stated the amount owed was \$1,800. The 2011 credit report identifies the original debt to the financial

¹ Tr. at 24-25, 41, 46; GE 1, 2.

² Tr. at 19-20, 45; GE 1, 2, 6.

³ Tr. at 26-30; Applicant's response to SOR; GE 3-6.

institution as charged off with a \$4,451 balance. It reports the account as opened in July 2009, with a date of last action of June 2010. The credit reports from April and August 2014 show the debt with a \$5,103 balance.⁴

Applicant stated that her daughter moved into an apartment, and Applicant placed the electricity account in her name. Her daughter moved out of the apartment without paying the electric bill. SOR ¶ 1.f alleges a \$387 debt to a collection company on behalf of the electric company. The debt is listed on the credit reports from April and August 2014, with a date of last action of May 2013 and a \$387 balance. Applicant stated that she has been making small monthly payments. She did not submit any corroborating documents.⁵

SOR ¶ 1.g alleges a delinquent debt of \$1,172 to a collection company on behalf of a financial institution. Applicant admitted owing the debt, but she stated the amount owed was \$880. The credit reports from April and August 2014 show the debt with a \$1,172 balance. The account is reported by Experian as opened in October 2013, with a date of last action of March 2014. The account is reported by Equifax as opened in October 2013, with a date of last action of November 2009. Applicant stated that her husband paid the debt. She did not submit any corroborating documents.⁶

Applicant denied owing the \$1,511 debt to a collection company on behalf of a department store (SOR ¶ 1.h). She stated that she went into the store and paid the bill before she cancelled the credit card. The 2011 credit report identifies the original debt to the department store as charged off with a \$1,197 balance. It reports the account as opened in May 2008, with a date of last action of August 2009. The credit reports from April and August 2014 show the debt with balances of \$1,488 and \$1,511.⁷

SOR ¶ 1.i alleges a delinquent debt of \$3,857 to a collection company on behalf of a bank. Applicant admitted owing the debt, but she stated the amount owed was about \$2,000. The 2011 credit report identifies the original debt to the bank as transferred with a zero balance. It reports the account as opened in September 2008, with a date of last action of October 2009. The credit reports from April and August 2014 show the debt with balances of \$3,750 and \$3,857. Applicant stated the credit card was used to pay the veterinarian bills for her dog that developed cancer. She stated that she contacted the creditor, but the creditor would not work with her to lower the payments to an amount that she can pay.⁸

⁴ Tr. at 30; Applicant's response to SOR; GE 3-6.

⁵ Tr. at 33-35; Applicant's response to SOR; GE 3-6.

⁶ Tr. at 35-36; Applicant's response to SOR; GE 3-6.

⁷ Tr. at 38-40; Applicant's response to SOR; GE 3-6.

⁸ Tr. at 40-41; Applicant's response to SOR; GE 3-6.

Applicant stated that she paid the \$64 debt alleged in SOR ¶ 1.j. The debt is reported by Experian on the April 2014 combined credit report. It is not listed on the August 2014 Equifax credit report.⁹

Applicant has not received financial counseling. She testified that her finances have improved. She stated that she is committed to paying her debts, but several of the creditors have refused to work with her, and they want lump-sum payments. Her current unemployment has hindered her efforts to resolve her debts, but she stated that after she returns to work she will contact her creditors and attempt to make payment arrangements. Applicant was informed of the importance of providing documentary evidence to substantiate her payment claims. She was given additional time after the hearing to submit evidence, but she submitted nothing.¹⁰

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) in August 2011. She submitted a Questionnaire for National Security Positions (SF 86) in March 2014. She answered “No” to all the financial questions in both questionnaires. Applicant denied intentionally falsifying both questionnaires. She stated that her husband handled the family’s finances, and she was unaware of the debts. Having considered all the evidence, I find that there is insufficient evidence for a determination that she intentionally falsified the questionnaires.¹¹

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 to be 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, administrative judges apply the guidelines 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.”

⁹ Tr. at 43; Applicant’s response to SOR; GE 3-6.

¹⁰ Tr. at 41-42, 47.

¹¹ Tr. at 18-20, 32, 44; Applicant’s response to SOR; GE 1, 2, 6.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The evidence does not establish that Applicant intentionally provided false information on her questionnaires. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a and 2.b are concluded for Applicant.

Guideline F, Financial Considerations

The security concern 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 under AG ¶ 19. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. The above disqualifying conditions are applicable.

The medical debts alleged in the SOR do not generate security concerns. SOR ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.k are concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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, 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 was unemployed from April 2010 until she was hired by a defense contractor in August 2011. A medical condition has prevented her husband from working since 2009 or 2010. Those events were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant was steadily employed until she was laid off in January 2015. Her statements that she made payments toward several debts have not been corroborated by documentary evidence. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) are not applicable. AG ¶ 20(b) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

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):

- (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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but she did not mitigate the financial considerations 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.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-i.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge