



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



In the matter of:)	
)	
)	ISCR Case No. 14-06338
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/05/2016

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 February 5, 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 February 24, 2015, and elected to have her case decided on the written record. On November 5, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on November 9, 2015, and it was received on November 20, 2015. Applicant

was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and offered Applicant's Exhibits (AE) A through I. The Government had no objection and they were admitted into evidence. The Government's documents identified as Items 2 through 11 are admitted into evidence. The case was assigned to me on February 17, 2016.

Findings of Fact

Applicant denied all the allegations in the SOR, except ¶¶ 1.e and 1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. She is a college graduate. She married in 2003 and has two children, ages 11 and 9. She has worked for federal contractors since September 2002. She was unemployed for two months in 2008 before starting work with her present employer.

Applicant denied owing the debt in SOR ¶ 1.b (\$673) to a cell phone company, indicating she paid the debt in 2007 or 2008 when she switched companies. In her response to the FORM, she indicated the account was closed in 2008, she was charged a termination fee, and the bill was sent to an incorrect address. She reached a settlement with the collection company to pay \$336, which she paid in December 2015.¹

Applicant provided proof that she paid the balance owed on the debt in SOR ¶ 1.c in 2009.² The debt in SOR ¶ 1.d (\$3,150) is a tax lien for unpaid income taxes. Applicant explained that her husband owed income taxes prior to their marriage. After they married, they filed their tax returns jointly and that was when she became aware of the lien. It was satisfied in 2006.³

Applicant indicated she was unaware of the debt in SOR ¶ 1.g (\$364). After researching the debt, she disputed it belonged to her and provided a Federal Bureau of Investigation news release that the creditor was accused of fraud and was no longer in business.⁴

The debts in SOR ¶¶ 1.h (\$78), 1.i (\$78), 1.j (\$65) and 1.k (\$55) are for delinquent parking fines. Applicant indicated they were paid and that she checked her account and there were no outstanding tickets. In her response to the FORM, she stated the tickets were an oversight and she did not know they existed. When she

¹ AE A and B.

² AE E.

³ AE F.

⁴ AE G.

checked her account she did not check for an older vehicle she had owned. She provided proof that she paid the tickets in December 2015.⁵

In her Answer to the SOR, Applicant denied she owed the debt in ¶ 1.a (\$572), indicating it was paid in 2013 or 2014. In her response to the FORM, she indicated that this debt is part of a student loan that is being consolidated. The debts in SOR ¶¶ 1.e (\$7,775) and 1.f (\$3,456) are also delinquent student loans. She indicated in her answer that she applied for forbearance on the loans until her husband got a job. She did not provide proof that she requested forbearance or that one was approved.

In her security clearance application completed on February 28, 2014, Applicant disclosed that the holder of the loans contacted her in February 2014 advising her that her student loans were delinquent. She thought her automatic payments were continuing and she did not realize they had stopped until she was notified by the creditor. In her statement to a government investigator in May 2014 she stated that her debit card had been compromised, and she did not switch the automatic payments at the time. She also was aware her husband's student loans were being automatically paid, but did not notice hers were not. She was aware in May 2014, that her accounts were in collection. She told the government investigator that she began a payment plan to pay the delinquent amount as well as make current payments. She believed she obtained the student loans in the 1990s.

Applicant's credit report from October 2015 reflects that the account in SOR ¶ 1.e is past due \$9,972 and the ¶ 1.f account is past due \$4,433.⁶ It does not reflect any payments.⁷ In response to the FORM, Applicant provided a document from the collection creditor dated December 7, 2015, indicating that Applicant had verbally authorized a "one-time ACH withdrawal" from her bank account for \$100 that would post on December 18, 2015.⁸ The document showed that the two student loans were consolidated and the total owed was \$14,542. It also showed a payment schedule of \$100 to be paid in January and February 2016. The letter did not show that Applicant had arranged an automatic withdrawal for future payments.

Applicant did not provide documents to confirm that she began making payments in February 2014 when she learned the student loans were delinquent as she stated or the loans were in forbearance. She did not provide information to show the debt in SOR ¶ 1.a was consolidated with her other student loans.⁹

⁵ AE C and D.

⁶ Item 5.

⁷ Items 3, 5, 6, and 10.

⁸ AE H and I.

⁹ Items 2, 3, 4, 5, 6, and 10; AE H and I.

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.¹⁰

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 had numerous delinquent debts totaling more than \$16,000 that were unpaid or unresolved. Her debts date back to at least 2014. 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business

¹⁰ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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 provided evidence to show she has paid, settled, or resolved the debts in SOR ¶ 1.b, 1.c, 1.d, and 1.h through 1.k. She indicated her student loans in SOR ¶ 1.a, 1.e and 1.f are consolidated, but the documents provided only support that the student loans in ¶¶ 1.e and 1.f are consolidated. She indicated that in 2013 she was making payments on her student loans by automatic withdrawal. Her debit card was compromised and she did not reauthorize the automatic withdrawal. She stated she was contacted by the creditor in 2014 advising her that her loans were in collection status. She indicated she began repaying the loans. She also indicated that her loans were placed in forbearance. Applicant failed to provide supporting documents to show she was paying her loans up until 2013; that when she learned the loans were in collection she began repaying them; that they are in forbearance; or that she is making regular payments on the loans. Her documents show she made a payment of \$100 in December 2015. The loans in SOR ¶¶ 1.e and 1.f show a balance owed of \$14,552. No documents were provided to show the debt in SOR ¶ 1.a was consolidated with the other student loans. There is insufficient evidence to conclude Applicant's student loan debt is being paid. Her delinquent debts are recent. There is insufficient evidence to conclude her financial problems are unlikely to recur. Her actions cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant indicated her financial problems regarding her student loans occurred because her debit card was compromised in 2013. This was beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not provide evidence that she was making regular payments prior to the intervening event; that she was granted forbearance on her student loans; or that she has been making regular payments on the loans since learning of the delinquency in 2014. She failed to provide sufficient evidence that she acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant resolved some of her delinquent debts. She did not provide evidence that she has received financial counseling. Her largest debts, the student loans, remain unresolved. AG ¶ 20(c) does not apply because there is insufficient evidence that her

financial problems are under control. AG ¶ 20(d) partially applies because there is evidence Applicant has paid, resolved, or settled some of the delinquent debts.

Applicant disputed the tax debt in SOR ¶ 1.d and provided proof it has been resolved. She also disputed the debt in SOR ¶ 1.g and provided information that the creditor is no longer in business and was being investigated by the FBI. There is sufficient evidence to conclude in Applicant's favor on these allegations. AG ¶ 20(e) applies to these debts.

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 41 years old and has been employed since 2002, except for a short period of unemployment. She resolved her delinquent parking tickets and some of her other debts. However, she failed to provide sufficient evidence that she was paying her student loans, or that when she learned they had become delinquent she started a repayment plan, or that she has been making consistent payments. She has failed to meet her burden of persuasion. 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraphs 1.e-1.f:	Against Applicant
Subparagraphs 1.g-1.k:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge