



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



In the matter of:)
)
) ISCR Case No. 15-00022
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On June 22, 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, and Guideline E, personal conduct. 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on July 15, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 15, 2016. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 8, 2016. I convened the hearing as scheduled on March 2, 2016. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. In addition, the Government submitted a copy of the discovery letter that it sent to Applicant, which was marked as Hearing Exhibit (HE) I. Applicant testified and offered Applicant Exhibits (AE) A through J, which were admitted into evidence without objection. The record was held open until March 16, 2016, to allow Applicant to submit additional documents. She submitted documents that were marked AE K through O, and were admitted into evidence without objection. The record then closed.¹ DOHA received the hearing transcript (Tr.) on March 11, 2016.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.b, 1.d, and 1.h through 1.i. She denied SOR ¶¶ 1.c, 1.e, 1.f, 1.g, and 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old. She is a high school graduate. She was married from 1976 to 1983 and has two grown children from the marriage. She was married from 1988 to 1990 to her second husband. She remarried in 1997 to her current husband.²

Applicant was unemployed from June 2009 to December 2010, and from December 2012 to November 2013. Her husband was unemployed due to a serious medical condition from June 2009 to November 2013. They are both working now.³

In June 2014, Applicant completed a security clearance application (SCA). In response to question 26 that requested she disclose any financial delinquencies, she responded “no” to all of the questions. Applicant was interviewed by an Office of Personnel Management (OPM) investigator in July 2014. She indicated to the investigator that she had some previous financial difficulties, but did not feel there were any accounts that needed to be reported on the questionnaire. She was then confronted with delinquent accounts from her history. When asked at her hearing why she told the investigator she did not feel she needed to report delinquent accounts she stated she did not know why she said that. She further indicated during her interview that she was unaware of most of the delinquent accounts, including those alleged in the SOR. She stated that she and her husband got behind in paying bills when he had medical problems beginning in 2009. After he began to receive disability payments they paid some of their creditors. She indicated that now that her husband is working, they hoped to pay off the remaining accounts. She told the investigator that she was aware of some

¹ HE II and III are Department Counsel’s email memoranda.

² Tr. 24-26.

³ Tr. 26-27.

of the reported delinquent accounts, but had never seen a copy of her credit report. She intended to contact the credit bureau and creditors to resolve the debts.⁴

Applicant testified that she completed the SCA at a library and only had an hour to finish it. She answered “no” to all of the inquiries about financial difficulties and delinquent debts, and tried to go back and change the answer, but the program would not let her do it, and she was concerned that the program would erase all of her previous answers. She did not know why she did not answer “yes” to the financial inquiries. She testified she regretted her mistake. She also testified that she was aware when she completed the SCA that she had delinquent debts. Many of these debts were incurred after her husband suffered a stroke in June 2009. She has been attempting to resolve her debts since then. She stated that she has paid accounts that are not listed on the SOR.⁵

Applicant indicated during her OPM interview that she had never heard of the creditor in SOR ¶ 1.a (\$70). She testified that she disputed the account because she had paid it. She stated she would provide proof of payment. Her post-hearing documents do not reflect payment of this debt. Applicant also testified she paid the debt in SOR ¶ 1.b (\$112). Her post-hearing document shows there is a zero balance owed on the account.⁶

Applicant testified that she believed the debt in SOR ¶ 1.c (\$1,163) was related to a withdrawal from her account for a child support payment owed by her husband, but is unsure. At the time of hearing, she had not contacted the creditor to resolve the issue or satisfy the debt. After the hearing, she provided a settlement agreement to resolve the debt. She agreed to pay \$697 by March 30, 2016, or the terms of the agreement would be voided.⁷ Regarding the debt in SOR ¶ 1.d (\$815) owed for a gas station credit card, Applicant stated she did not know anything about this account and has not made inquiries to dispute or resolve it. During her OPM interview she indicated she believed this account was a credit card used for personal expenses, and it had been paid in full. She did not provide documentary evidence of her actions to resolve this debt.⁸

The debt in SOR ¶ 1.e (\$40,314) was for a vehicle that Applicant and her spouse purchased in 2007. She testified she made payments on the vehicle until June 2009. The monthly payment was \$983. Applicant testified that the car was voluntarily

⁴ Tr. 27, 77-80; GE 2.

⁵ Tr. 32-41, AE A, B, C, and D.

⁶ Tr. 42-46; AE M. During Applicant’s OPM interview she indicated that she never heard of the creditors, could not provide account numbers, the amounts owed, or what the debts were for. Many of the debts alleged were transferred or sold to collection agencies, which may explain why Applicant could not identify the accounts during her interview.

⁷ Tr. 46-50; AE N. Applicant was made aware of this debt during her OPM interview.

⁸ Tr. 50-51; GE 2.

repossessed in June or July 2009 and auctioned off. When questioned by the OPM investigator, she stated she thought the amount she owed on the loan was satisfied by the auction. At her hearing, she testified that she believed there was a deficiency balance, but she was not certain of the amount. She testified that she became aware that there was still an issue with the debt because when she met with a credit counselor in 2009 she saw that it was on her credit report and listed as charged off. She did not believe she owed the creditor because of the charged off status. In her post-hearing response, Applicant stated: “The Toyota is another story. They stole my paid off car, lied and cheated us! Tried to return it and get car back but 45 days had passed because we were out on the road. By the way, there was a class action suit on [dealer] and [creditor] for the way the[y] were conducting business.”⁹ Credit reports from July 2014 and June 2015 reflect the loan was transferred/sold to a collection agency and charged off in December 2012 for \$40,314. Applicant did not provide documentary evidence of her actions to resolve this debt.¹⁰

The debt in SOR ¶ 1.f (\$681) was for a cell phone account. Applicant testified that she had no idea how old the account was and that she had paid it about a year ago. She stated she would provide the receipt of payment in her post-hearing documents. Applicant provided a letter from the collection agency holding the debt dated March 10, 2016, agreeing to settle the debt for \$272 with her initial payment of \$100 due on March 30, 2016.¹¹

At her hearing, Applicant testified she had no knowledge of the debt in SOR ¶ 1.g (\$617). She stated she contacted the creditor who was unfamiliar with the debt. She did not dispute the debt with the credit bureau. In her post-hearing statement, she indicated she attempted to contact the original creditor, but the company was permanently close. No further evidence was provided.¹²

Applicant believed that the debt in SOR ¶ 1.h (\$272) became delinquent about a year ago. She was going to provide supporting documents to show it was resolved, but she did not.¹³

The debts in SOR ¶¶ 1.i (\$265), 1.j (\$199), 1.k (\$100), and 1.l (\$170) are medical debts. Applicant testified that the accounts in SOR ¶¶ 1.a and 1.l are duplicates. They have the same account number, and I concur. I find in Applicant’s favor on SOR ¶ 1.l. Applicant testified that she paid these medical debts and would provide receipts. She did not. She indicated in her post-hearing response that she attempted to contact the creditors for the debts in SOR ¶¶ 1.i and 1.j but “got run around” so she disputes them.

⁹ AE L.

¹⁰ Tr. 51- 57; GE 2, 3, and 4.

¹¹ Tr. 57-58; AE O.

¹² Tr. 58-60; AE L.

¹³ Tr. 60-61.

She did not provide documentary evidence on her actions to dispute debts. She did not provide information on the debt in SOR ¶ 1.k.¹⁴

Applicant testified that her current finances are stable, and she pays her bills on time. She does not have a written budget. She estimated she had about \$3,100 in savings and \$200 in her checking account. In June 2009, she sought credit counseling because she was concerned about losing her house. Before then, she never looked at her credit report. She was able to get a modification on her mortgage loan in 2010. She has met with a credit counselor about six times since then. She goes when she feels like she needs help. She last reviewed her credit report in 2015. She stated her husband went back to work in November 2013, and in August 2014 she started to pay some delinquent debts when she was able. She did not want to get into debt, but it occurred when her husband got ill in 2009. She provided tax forms to show how much she earned in 2015. She did not include her husband's earnings, but she stated he earns about the same amount as she does. Applicant's husband was approved for social security disability benefits in 2011 and they were discontinued in April 2014.¹⁵

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

¹⁴ Tr. 61-64; AE K.

¹⁵ Tr. 66-76, 80-83; AE F, G, H, and I.

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. Such decisions entail a certain degree of legally permissible extrapolation of 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 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.¹⁶

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

¹⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

Applicant has numerous delinquent debts that she began incurring in about 2009, which remain unresolved. The above disqualifying conditions apply.

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 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 has many unresolved delinquent debts. Although she stated she had paid some, she failed to provide supporting documentary evidence. AG ¶ 20(a) does not apply. Applicant's husband had a serious medical condition and was unemployed for an extended period. Applicant was also unemployed for a period. These conditions were beyond her control. For the full application of AG ¶ 20(b), Applicant must demonstrate that she acted responsibly under the circumstances. Applicant failed to provide sufficient evidence of actions she took to resolve her delinquent debts since she and her husband resumed working. She stated that many debts in the SOR were paid, but failed to provide documentary evidence despite the record being held open. She indicated another debt was paid a year ago, but the evidence she provided showed that she reached a settlement agreement with the creditor after her hearing, and the debt remains unpaid. AG ¶ 20(b) partially applies.

Applicant stated she received financial counseling several times over the past few years and that she has also reviewed her credit report several times since 2009. She continues to have debts that are not resolved. AG ¶ 20(c) partially applies to the extent that she sought financial counseling, but there is insufficient evidence to conclude her financial problems are under control.

Applicant resolved the delinquent debts in SOR ¶¶ 1.b, 1.c, 1.f, 1.g, and 1.i. Although she has not yet paid the settlement amounts agreed to for the debts in SOR ¶¶ 1.c and 1.f, I believe she will act responsibly and do so. AG ¶ 20(d) applies to these debts. The others delinquent debts remain unpaid and unresolved.

Applicant disputes several delinquent debts including the largest one in SOR ¶ 1.e for a repossessed vehicle. She failed to provide the basis of her dispute as her testimony and post-hearing documents differed from the statement she made to the OPM investigator. She did not provide proof that she resolved this debt or evidence of her actions to dispute the debt, or any of the remaining debts alleged in the SOR. AG ¶ 20(e) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

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. I find the following 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.

Applicant failed to disclose on her SCA that she had financial difficulties when she answered “no” to all of the financial inquiry questions. She testified that she completed her SCA at a library and had a limited amount of time to use the computer. She answered “no” to questions about her finances and attempted to go back and change the response, but the program would not permit her to do so. She was then concerned that her earlier responses would be deleted if she tried to correct them. When Applicant was interviewed by an OPM investigator, subsequent to completing her SCA, she stated that when she completed the SCA she did not believe that she had any

delinquent accounts that required disclosing. At her hearing, she testified she was aware she had delinquent debts that she should have disclosed. Her contradictory statements are a concern. In addition, she told the investigator that she had never reviewed a credit report, which contradicts her testimony that she had worked with a financial counselor to modify her mortgage loan and reviewed her credit report in 2009 and subsequently several times.¹⁷ I find that Applicant deliberately failed to disclose on her SCA that she had delinquent debts. She had an opportunity to disclose this information to the OPM investigator during her interview, but did not.

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 Guidelines F and E 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 57 years old. She has numerous delinquent debts that are not resolved. She began experiencing financial problems in 2009 when her husband had a serious medical condition and they experienced extended periods of unemployment. She testified she was aware that she was required to disclose delinquent debts when she completed her SCA, but failed to do so. Her explanation for her failure was because the computer program did not permit her to go back. However, she had an opportunity to disclose her financial problems when she was interviewed by an OPM investigator. Instead, she told him that she did not think she had accounts that needed to be disclosed. Her contradictory and inconsistent statements raise questions about her credibility. I find she intentionally failed to disclose she had delinquent debts. Applicant

¹⁷ These comments are not considered for disqualifying purposes, but will be considered when analyzing Applicant's credibility, extenuation and mitigation and the whole person.

did not provide sufficient evidence to show she has an established track record of being fiscally responsible. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations and personal conduct guidelines.

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.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge