



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



In the matter of:)	
)	
)	ISCR Case No. 15-00908
)	
Applicant for Security Clearance)	

Appearances

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

01/28/2016

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 August 15, 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 September 8, 2015, and elected to have her case decided on the written record. On October 23, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant on October 26, 2015, and it was received on November 3, 2015. Applicant

was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. There were no objections by Applicant or Department Counsel to any evidence offered. The Government's documents identified as Items 3 through 7 and Applicant's documents marked as Items 8 through 15 are admitted into evidence. The case was assigned to me on January 5, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b through 1.j. She denied the remaining allegations in ¶¶ 1.a and 1.k. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. She received a diploma from a technical school in 2000. She has been employed by a federal contractor since 2001, and her present employer since November 2005. She has not served in the military. She was married from 1986 to 1997 and has three adult children from the marriage. She was married from 1997 to 2004. She remarried in 2005 and has a two grown stepchildren.¹

Applicant provided sufficient documented proof that the 2005 tax lien in SOR ¶ 1.a (\$205) was paid in July 2005.² Credit reports from September 2012 and January 2015 substantiate the other delinquent debts alleged in the SOR.³

Applicant completed a security clearance application (SCA) on September 17, 2012. Her responses to inquiries about her financial delinquencies under Question 26 indicated that she had a delinquent debt for a car loan. She stated the debt involved two vehicles that had a combined balance of \$19,000. She explained: "Two vehicles that I was cosigner with my ex-husband, he didn't pay the loan so I had them pick them up. Since I am the cosigner I am being held responsible for the amount they didn't get on the vehicles."⁴ She further stated that "a monthly payment is being made every month on the first in the amount of [\$] 500.00."⁵ In her answer to the SOR, Applicant admitted the car loan debts in ¶¶ 1.b (judgment entered in 2009 - \$6,044) and 1.c (judgment entered in 2008 - \$13,911). She stated the debt in ¶ 1.b was due to her divorce and it was her "ex-husband's responsibility as mandated by the divorce." Regarding the debt in ¶ 1.c she stated that this debt was being paid, and "due to the divorce my ex-husband was supposed to pay per divorce." During her background interview in October 2012 she told a government investigator that she could not afford the \$500 payments after her husband lost his job. She provided a document, dated January 6, 2015, from the

¹ Item 4.

² Item 11.

³ Items 5 and 7.

⁴ Item 4.

⁵ Item 4.

creditor that confirms there is a judgment in the amount of \$14,491 and that Applicant has an installment agreement that required her to pay \$1,471 as a down payment in three payments of \$490 on January 3, 2015, January 28, 2015, and February 12, 2015. After that she was required to make \$300 payments on the 26th of each month until the balance was satisfied. She provided a letter dated September 8, 2015, which reflects a balance on the judgment of \$11,221.⁶

In response to the FORM, Applicant provided a copy of a “complaint for divorce” that is signed by her on March 26, 2004. There is no proof the document was filed. The acknowledgement of service of process is unsigned. She also included a settlement agreement that is signed by her but not her husband at the time. None of the documents have a court file number, a date stamp, nor are they signed by a judge. No final divorce decree or property settlement was included with her response to the FORM. The proposed settlement agreement stated that each party would be responsible for one of the cars until the note was paid in full. This proposal is different from what Applicant indicated in her answer that her husband was responsible for both cars. Because no official documents were provided, I do not know if a final settlement was affirmed as noted in the proposed settlement. Applicant failed to provide proof that she is not responsible for the car note in SOR ¶ 1.b. There is insufficient proof to conclude the two loans were consolidated.⁷

The debts in SOR ¶¶ 1.d (\$302, last activity May 2011); 1.e (\$222, last activity July 2009); 1.f (\$81, last activity September 2013); 1.g (\$55, last activity December 2011); 1.h (\$257, last activity January 2007); 1.i (\$163, last activity April 2008); and 1.j (\$50, last activity August 2008) are collection accounts for medical debts. During her background interview by a government investigator in October 2012, Applicant was confronted with and acknowledged the medical debts. She indicated she was unaware of the debts and would contact the creditors and take action to repay them if they belonged to her. In September 2015 Applicant established a payment plan that included four medical debts. It appears to include the debts in ¶¶ 1.d, 1.e, 1.g, and another debt not alleged. The evidence does not include the remaining debts. It is unclear if the remaining medical debts were consolidated into the four debts. Applicant made one payment of \$101 on September 8, 2015, regarding these debts. She did not provide proof of additional payments.⁸

The debt in SOR ¶ 1.k (\$76, last activity August 2012) is a collection account for unpaid insurance. Applicant indicated that she contacted the creditor and the debt could not be verified.⁹

⁶ Item 3, 4, 6, and 12.

⁷ Items 3 and 12.

⁸ Items 6, 13 and 14.

⁹ Item 3.

Applicant provided a copy of her husband's pay stub for a two-week period in October 2015, which also included his gross wages for the year-to-date and a 401K loan. She also included an unsigned 2009 federal income tax return 1040 form. It lists her husband as unemployed. No other past or current financial information was provided.¹⁰

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

¹⁰ Items 10 and 15.

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.¹¹

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 numerous delinquent debts, including two judgments, totaling approximately \$21,161. Her delinquent debts began in 2007. There is sufficient evidence to support the application of both 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:

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

(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 delinquent debts that are not resolved. Applicant's delinquent debts are still being addressed. 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 her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant indicated her financial problems were due to her divorce. There is also some evidence that Applicant's husband was unemployed for a period. These were conditions that were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant failed to provide more detailed information regarding her husband's period of unemployment, other than an unsigned 2009 tax form that lists him as unemployed. There are two judgments alleged in the SOR for car loans (¶¶ 1.b and 1.c). Applicant acknowledged she was the cosigner on the loans and that her ex-husband was required to pay one and she was required to pay the other. She was divorced in 2004 and the judgments were entered in 2008 and 2009 respectively. The evidence Applicant produced shows that she did not begin to address the judgment in SOR ¶ 1.c until January 2015.¹² The unsigned proposed settlement agreement is insufficient to show she is not responsible for the debt in SOR ¶ 1.b. Her other debts show delinquency dates from 2007 through 2011. She was confronted with these debts during her background interview in 2012 and indicated she would take action to resolve them if they belonged to her. In September 2015 she

¹² Applicant indicated in her background interview that she agreed to make payments of \$500 toward the judgment, but due to her husband's unemployment she was unable.

initiated a payment plan to address some of the medical debts and provided proof of one payment toward the plan. I find AG ¶ 20(b) partially applies.

Applicant initiated a payment agreement in January 2015 with the creditor for the judgment in SOR ¶ 1.c and has since reduced the balance on that debt. She began a payment agreement in September 2015 for some of her medical debts and provided proof of one payment. There is no evidence she has received financial counseling. There is evidence that she is resolving some of her debts. AG ¶ 20(c) partially applies.

Applicant did not begin to address the 2008 judgment in SOR ¶ 1.c until 2015. She did not begin to address her other debts until after she received the SOR. She provided proof of one payment for some of the medical debts. She provided proof that the tax lien alleged in SOR ¶ 1.a is resolved. AG ¶ 20(d) applies to SOR ¶ 1.a and marginally applies to the other debts, as her actions did not occur until after she received the SOR and seven years after the judgment was entered. The judgment in SOR ¶ 1.b is not resolved.

Applicant denied the collection account debt alleged in SOR ¶ 1.k. She did not provide any evidence to substantiate the basis of her dispute or her actions to resolve 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 47 years old. She has been employed by a federal contractor since 2001 and her current employer since 2005. She has made some effort to resolve some of her delinquent debts, but did not begin to address the issues until 2015. She did not provide sufficient evidence to conclude the second judgment alleged is not her responsibility. She provided proof that she has a payment plan to resolve some of her delinquent medical debts, but has only made one payment. She did not take action to resolve these debts until September 2015, almost three years after she was confronted with them during her background interview. She did not provide evidence of her plan to resolve the remaining debts. Applicant does not have a reliable track record from which to conclude her finances are stable and that she will continue to be diligent in resolving her financial problems. 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-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