



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



In the matter of:)
)
) ISCR Case No. 14-04004
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

04/20/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 7, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 5, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015, and the hearing was convened as scheduled on March 3, 2015. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence. An

objection to GE 2 was overruled and there were no other objections. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, and offered exhibits (AE) A through C, which were admitted into the record without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE D, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 10, 2015.

Findings of Fact

Applicant admitted the following SOR allegations: ¶¶ 1.b, 1.d – 1.f, 1.g, 1.i – 1.j, 1.l, 1.n, 1.q – 1.r, 1.t – 1.u, 1.w, 1.bb - 1.cc, and 1.kk. She denied ¶¶ 1.a, 1.c, 1.h, 1.k, 1.m, 1.o – 1.p, 1.s, 1.v, 1.x – 1.aa, 1.dd, and 1.ff – 1.jj. The Government withdrew SOR ¶¶ 1.g, 1.k, 1.p, and 1.v.¹ The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 30-year-old employee of a defense contractor. She has worked for this employer for about two years. She provides logistical support. She earned a GED. She has no military service and this is her first time seeking a security clearance. She is in her second marriage and has a total of five children from both marriages. She now receives child support from her ex-husband of approximately \$400 a month for two of the children. Her first marriage lasted from 2004 to 2008.²

The SOR alleges 36 delinquent debts and Applicant's 2005 Chapter 7 bankruptcy. The total debt is in excess of \$29,000 (exclusive of the withdrawn SOR allegations). The debts were listed in a credit report from January 2014.³

Applicant's financial problems arose because of several reasons. First, because of debts incurred during her first marriage; second, after her divorce, she had difficulty making ends meet for her children as a single mother; and third, her ex-husband failing to live up to his responsibilities as set forth in their divorce settlement. She and her first husband filed a Chapter 7 bankruptcy in 2005 mostly because of the amount of debt her husband brought into the marriage. She divorced her husband in 2008 and some of the terms of the divorce were that each party was to pay fifty percent of a debt related to a broken lease (SOR ¶ 1.c) and each party was to share equally all medical expenses for the children. Her ex-husband has not fulfilled his obligations in this regard and she intends to seek judicial redress against him. Thirty-three of the SOR allegations are for delinquent medical debts. The status of the SOR-related debts is as follows:⁴

¹ Tr. at 20.

² Tr. at 6, 30-31, 33-34; GE 1.

³ GE 2.

⁴ Tr. at 33, 69-70; GE 3; AE B.

SOR ¶ 1.a (medical account- \$102):

The last action on this collection account was in August 2007. Applicant stated she contacted the creditor, but no resolution occurred. This debt is unresolved.⁵

SOR ¶ 1.b (medical account \$12,102):

Applicant stated that this debt includes expenses for her children and herself. It was assigned to a collection service in February 2010. She contacted the collection service, but no payment arrangement was worked out. This debt is unresolved.⁶

SOR ¶ 1.c (collection account for unfulfilled rental contract \$3,396):

According to Applicant's divorce settlement, both she and her ex-husband were ordered to contribute fifty percent to pay this debt. She stated that her ex-husband did not contribute so there was no point in her doing so because the debt would still exist. This debt is unresolved.⁷

SOR ¶¶ 1.d – 1.f, 1.h – 1.i, 1.l, 1.n, 1.s - 1.t, 1.w, 1.aa, 1.dd, 1.ff – 1.gg, 1.ii, - 1.jj (medical accounts \$9,522):

These accounts were to the same health provider. The date of last action on the earliest of these accounts was in May 2007 and the latest was in May 2011. Applicant contacted the creditor and arranged to pay seven of the collection accounts, starting with the smaller debts. She paid SOR ¶ 1.s for \$617 in October 2014. She paid SOR ¶ 1.dd for \$126, ¶ 1.ff for \$49, ¶ 1.gg for \$34, and ¶ 1.ii for \$31 in December 2014. She paid SOR ¶ 1.t for \$341 and ¶ 1.w for \$243 in February 2015. She has paid a total of \$1,441 to this creditor. The rest of the collection accounts remain unpaid. She did not present any formalized payment plan other than to say she was working with the creditor. These debts are partially resolved.⁸

SOR ¶ 1.j (medical account \$938):

The date of last activity on this account was October 2007. Applicant has not set up payment arrangements for this debt. This debt is unresolved.⁹

⁵ Tr. at 35; GE 2.

⁶ Tr. at 35; GE 2.

⁷ Tr. at 36; GE 2; AE B.

⁸ Tr. at 37-41, 43-4650, 5254, 56; GE 2, AE A.

⁹ Tr. at 39; GE 2.

SOR ¶ 1.m (medical account \$613):

The last action on this collection account was in December 2007. Applicant claims she does not recognize this debt and cannot identify the creditor because she only has an account number. Since Applicant cannot identify this account, it is resolved in her favor.¹⁰

SOR ¶ 1.o (medical account \$467):

The last action on this collection account was in December 2007. Applicant claims she does not recognize this debt and cannot identify the creditor because she only has an account number. Since Applicant cannot identify this account, it is resolved in her favor.¹¹

SOR ¶ 1.q (medical account \$387):

The last action on this collection account was in May 2008. Applicant contacted this collection service, but was unable to reach a payment agreement. This debt is unresolved.¹²

SOR ¶ 1.r (medical account \$374):

The last action on this collection account was in December 2007. Applicant contacted this collection service, but was unable to reach a payment agreement. This debt is unresolved.¹³

SOR ¶ 1.u (medical account \$335):

The last action on this collection account was in May 2008. Applicant contacted this collection service, but was unable to reach a payment agreement. This debt is unresolved.¹⁴

SOR ¶ 1.x (medical account \$205):

The last action on this collection account was in September 2007. Applicant contacted this collection service, but was unable to reach a payment agreement. This debt is unresolved.¹⁵

¹⁰ Tr. at 40; GE 2.

¹¹ Tr. at 41-42; GE 2.

¹² Tr. at 42; GE 2.

¹³ Tr. at 43; GE 2.

¹⁴ Tr. at 46-47; GE 2.

¹⁵ Tr. at 47; GE 2.

SOR ¶ 1.y (telecommunications debt \$193):

The last action on this collection account was in August 2012. Applicant has not made any payment arrangements for this debt. This debt is unresolved.¹⁶

SOR ¶ 1.z (medical account \$189):

This account is a duplicate account with SOR ¶ 1.w, which was paid. This debt is resolved.¹⁷

SOR ¶ 1.bb (medical account \$160):

This account was assigned to a collection service in October 2011. Applicant contacted this service, but was unable to reach a payment agreement. This debt is unresolved.¹⁸

SOR ¶ 1.cc (medical account \$141):

This account was assigned to a collection service in April 2008. Applicant contacted this service, but was unable to reach a payment agreement. This debt is unresolved.¹⁹

SOR ¶ 1.ee (utility account \$74):

This balance date for this collection account is September 2007. This debt is unresolved.²⁰

SOR ¶ 1.hh (medical account \$33):

This account was assigned to a collection service in August 2007. Applicant contacted this service and found out that the collection service filed for bankruptcy and is no longer in business. This debt is resolved.²¹

Applicant stated that she has about \$200-\$400 of disposable income at the end of a typical month after paying all current expenses. As of the date of the hearing, she

¹⁶ Tr. at 47-48; GE 2.

¹⁷ Tr. at 48-49; GE 2.

¹⁸ Tr. at 50-51; GE 2.

¹⁹ Tr. at 51; GE 2.

²⁰ Tr. at 53; GE 2.

²¹ Tr. at 55; GE 2.

had \$200 in her checking account and \$400 in her savings account. She has a 401k retirement account with \$3,000. She is current on her mortgage payment (\$1,300 monthly), her car payment (\$330 monthly), her student loan payments (\$55 monthly), and her federal and state taxes. She has not received financial counseling.²²

Applicant presented character letters on her behalf from three friends and a coworker. They described her as dependable and trustworthy. They also commended her civic work with youth in the community.²³

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 that 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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

²² Tr. at 62-63, 65-68.

²³ AE C-D.

the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 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 as follows:

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. Three are potentially applicable in this case:

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

Applicant has numerous delinquent debts and a Chapter 7 bankruptcy. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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's debts are recent, multiple, and cast doubt on her reliability, trustworthiness, and good judgment. She just recently began addressing her delinquent debts and the majority of them remain unpaid. AG ¶ 20(a) is not applicable.

Applicant's divorce in 2008, her single mother status, and her ex-husband's failure to provide financial resources as ordered by their divorce decree can be considered conditions beyond her control. She only began addressing some of the medical debts in December 2014 and has paid only seven debts with some of the smaller balances. Overall the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not sought financial counseling. Given the unpaid status of the SOR debts and prior bankruptcy, there are not clear indications that Applicant's financial problems are under control. Although she paid seven debts and contacted several other creditors, evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) does not apply and ¶ 20(d) partially applies.

Applicant failed to supply documentary evidence to support her dispute of certain debts. AG ¶ 20(e) does not apply. However, as stated earlier, there are two debts that I found duplicative with other debts. Those I find in favor of Applicant.

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 relevant 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.

I considered the circumstances by which Applicant became indebted. However, I also considered that she has only recently taken some action to resolve her financial situation. She has not established a meaningful track record of financial responsibility, which causes me to question her ability to resolve her debts.

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 has not mitigated 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.f:	Against Applicant
Subparagraph: 1.g:	Withdrawn
Subparagraphs: 1.h – 1.j:	Against Applicant
Subparagraph: 1.k:	Withdrawn
Subparagraph: 1.l:	Against Applicant
Subparagraph: 1.m:	For Applicant
Subparagraph: 1.n:	Against Applicant
Subparagraph: 1.o:	For Applicant
Subparagraph: 1.p:	Withdrawn
Subparagraphs: 1.q – 1.r:	Against Applicant
Subparagraphs: 1.s – 1.t:	For Applicant
Subparagraph: 1.u:	Against Applicant
Subparagraph: 1.v:	Withdrawn
Subparagraph: 1.w:	For Applicant
Subparagraphs: 1.x – 1.y:	Against Applicant
Subparagraph: 1.z:	For Applicant
Subparagraphs: 1.aa – 1.cc:	Against Applicant
Subparagraph: 1.dd:	For Applicant
Subparagraph: 1.ee:	Against Applicant

Subparagraphs: 1.ff – 1.gg:	For Applicant
Subparagraph: 1.hh:	Against Applicant
Subparagraphs: 1.ii – 1.jj:	For Applicant
Subparagraph: 1.kk:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge