



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



In the matter of:)
)
-----) ISCR Case No. 17-02159
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: *Pro se*

03/21/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On July 31, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ In an undated response, she addressed the allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on May 10, 2018.

A notice was issued on June 19, 2018, setting the hearing for August 23, 2018. The hearing was convened as scheduled, during which time the Government offered six exhibits (Exs.), noted as Exs. 1-6, plus two hearing exhibits (HE), accepted as HE 1-2. Applicant rendered testimony relevant to the case. On September 4, 2018, post-hearing submissions from Applicant were accepted into the record without objection as Exs. A-B. The record was then closed. In the interim, the transcript (Tr.) was received on

¹ 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 or after June 8, 2017.

September 4, 2018. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate security concerns.

Findings of Fact

Applicant is a 47-year-old mother of two children in their mid-20s. She has been serving as a system controller for the same defense contractor for over a year and a half. Applicant has earned an associate's degree. She served on active duty in the United States military honorably from 1989 through 1996, where she maintained a security clearance without incident. Upon discharge, she returned to her home state with plans to start college. Instead, she started to work.

In 2004, friends encouraged Applicant to seek a contractor job abroad, which she did. From there, she served multiple employers over the year, often in lateral moves rather than promotions. Her current position, accepted in 2017, was a lateral move. During this time, she enjoyed the freedom of quick trips to neighboring regions as a tourist. She enjoyed this life. Overtime, debt was acquired while most of her accounts and obligations were left to her family in the United States to manage for her. (Tr. 37).

At issue in the SOR are eight allegations concerning delinquent debts, 1.a-1.1.h, representing approximately \$51,000. Much of her debt delinquency dates to about 2013, when there was an interruption of payments on her accounts despite sufficient income to honor her obligations. (Tr. 37-38, 41) This while family members managed her bill on her behalf. Applicant admits two debts owed to a credit union (*SOR allegation 1.a-1.b*) representing approximately \$36,591.² Applicant said she has made "a couple" of payments toward this debt, but provided no documentary evidence to that effect. (Tr. 48) After the hearing, however, she provided documentation reflecting confirmation of prescheduled monthly payments in the amount of \$200 to begin two months after the hearing. (Ex. A-B) No copy of the referenced agreement was attached.

There is also one account debt owed to a collection agency for a lender Applicant does not recognize from 2016 (*SOR allegation 1.c*) for \$4,421. She presented no documentary evidence regarding this account, although the Government's credit reports suggest it may be in repayment. (Tr. 28). After the hearing, Applicant wrote that she had been in contact with this entity and worked on a repayment schedule, but provided no documentary evidence indicating any action had been taken or any documented payments had yet been paid.

The majority of the delinquent debt alleged is credit card debt, but the SOR also reflects debts related to state taxes and medical balances. Of the medical debts (*SOR allegations 1.d., 1.g*), Applicant does not recognize the first debt, but suggests it could be for care given to her daughter. She contacted her former insurer, which she has not used in several years, and it did not recognize her or her membership number. (Tr. 31)

² Applicant does not recall the account at 1.b, but notes family members had power of attorney and that she had what he believed was a smaller second account with this entity. (Tr. 45-48)

She offered to pay the \$218 at issue in 2017, but her offer was declined. (Tr. 29-30) She experienced the same problem addressing a second medical debt for \$570.

The tax liability (*SOR allegations 1.e, 1.f, and 1.h*) was mostly acquired due to mishap, as the state taxing authority had been sending Applicant notices of tax liability to an incorrect address for at least a year. (Tr. 23) Once discovered, Applicant had her family make the necessary address correction for her while she was abroad. Applicant now manages the situation overseas via the Internet. Those debts, amounting to about \$8,580, were satisfied in January 2017. (Ex. 6; Tr. 24) In about 2016, she received word a garnishment had been attached to her pay. (Tr. 61) By that point, Applicant took over management of all her debts. (Tr. 53)

Applicant is presently in charge of her finances and able to honor her daily expenses under a manageable budget (Tr. 58-59) One child is about to graduate from college and “probably” be independent financially. (Tr. 54) Applicant’s mother has since passed away, so there is no parental financial assistance extended by Applicant. Applicant has had telephonic financial counseling from abroad and is expecting to receive a session in person in the near future.

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. 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 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 any 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.

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 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant had numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate the finance-related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There are multiple delinquent debts at issue, some dating back to 2013. It appears her initial buildup of delinquent debt was the result of inaction by her family, to whom she had entrusted the maintenance of her accounts and affairs during the many years while she lived abroad. When she discovered there was a problem, she immediately had them give the state tax entity her current address and began controlling the situation herself by Internet. She then assumed control of all of her accounts in the same way, shifting the obligation for her accounts to herself through the ever increasingly ubiquitous Internet technology. This is sufficient to raise AG ¶ 20(b).

Applicant has received telephonic financial counseling, taken control of her state tax situation, and apparently tried to repay the two smaller medical accounts. She testified orally that payments on the medical accounts were actively refused by the insurer because they no longer had information on her or the balances. The lion's share of her remaining delinquent debt (approximately \$37,000 of \$51,000), and the related security concerns, remain in the form of the notably large credit card balances.

Applicant apparently made arrangements to make monthly \$200 payments toward the debts at 1.a and 1.b, but not until well after the hearing was adjourned. No copy of the underlying financial arrangement was offered. There is scant documentation with regard to what she has done or plans to do with regard to the debt from 1.c. The substantial financial balances owed and the last-minute efforts regarding these debts are not insignificant, and they limit complete application of AG ¶ 20(c) and AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 47-year-old system controller who has worked for the same contractor for over a year and a half. She served in the military honorably on active duty from 1989 through 1996, and worked abroad as a defense contractor since about 2004. Applicant is the mother of two grown children. Until a few years ago, her family based in the United States monitored her affairs and financial contractors on her behalf.

At issue in this case is approximately \$51,000, of which, nearly \$37,000 concerns two recognized commercial credit card balances. When first aware she owed state delinquent taxes that had gone unnoticed because the state did not have her most current contact address, Applicant had her family correct the address confusion and she

personally made sure the arrearage of about \$8,500 was satisfied in January 2017. She has also tried to pay the delinquent debts to a former medical provider amounting to almost \$800, but the provider is said to have refused payment because neither the accounts nor Applicant are in its records. No documentary evidence was provided concerning what Applicant has since identified as a commercial debt of about \$4,000, although she indicated she has spoken with the entity.

That leaves the approximately \$37,000 owed to her former commercial credit card. After the hearing, Applicant forwarded copies of paperwork showing she had made arrangements for future monthly \$200 payments on a referenced, but not offered, repayment arrangement. While this suggests effort, no complete documentation has been offered to show a full repayment package has been finalized and implemented, nor is there evidence that such action was commenced before the SOR was issued.

This process does not demand that an applicant pay all of one's delinquent debts. It does, however, expect an applicant to describe a workable and manageable agreement and demonstrate by documentary evidence that a meaningful track record of timely and notable payment has been established. Here, with regard to the overwhelming majority of the delinquent debt at issue, Applicant simply waited too late to enact the appropriate steps to provide documentation that the brunt of her debt has been brought under control. In light of the above, I find that at this time, Applicant's efforts and documentation fail to mitigate 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.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge