



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



In the matter of:)
)
) ISCR Case No. 17-04214
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2018

Decision

KILMARTIN, Robert J., 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

Applicant completed a Questionnaire for National Security Positions (SF 86) on June 20, 2016.¹ On December 29, 2017, 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 (EO) 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 (AGs) effective within the DOD for SORs issued after June 8, 2017.

Applicant answered the SOR on February 27, 2018, admitting 15 of the allegations in the SOR and denying 12. She requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing for April 11, 2018. The hearing was convened

¹ Also known as a Security Clearance Application (SCA).

as scheduled. The Government's Exhibits (GEs) were not available for the hearing.² I left the record open until April 24, 2018, for Department Counsel to provide Applicant with the GEs. She did not object and (GE) 1 – 4 were submitted post-hearing and admitted in evidence. I granted Applicant's request to keep the record open for an additional period until May 4, 2018, to submit documents.

Applicant provided post-hearing documents marked as Applicant's Exhibits (AE) A – E including: a monthly bill from American Education Services (AES) showing a payment made of \$149 on March 28, 2018, and a payment of \$149 due on April 19, 2018 (AE A); a letter from the U.S. Treasury indicating that \$2,294 from Applicant's tax refund was applied to her Department of Education (DOE) student loan debt (AE B); a letter from her new DOE student loan servicer dated March 6, 2018, telling her to continue her payments of \$5 per month on her federal student loan debt (AE C); and loan rehabilitation documents from Kentucky Higher Education Student Loan Corporation, increasing her monthly payments from \$25 to \$232 starting on April 26, 2018, with a total balance owed of \$6,778 (AE D).

Findings of Fact³

Applicant is 31 years old. She graduated from high school in 2004, and attended college, but did not obtain a degree. (Tr. 17) She was married in 2006 and divorced in 2017, and reports one daughter from that marriage, age 10, and one son, age 11. (Tr. 15) Applicant remarried recently on April 1, 2018. Applicant has been employed as a supply technician by a federal contractor since May 2016. (Tr. 17) Applicant reports no previous security clearance. (Tr. 12)

The SOR alleges 27 delinquent debts totaling over \$54,000, including debts placed for collections, and judgments against Applicant. Applicant "agreed" or admitted 15 of the alleged delinquent debts in her Answer to the SOR, including all of the delinquent student loans. (Answer, Tr. 9). She "disagreed" or denied the six medical debts alleged in the SOR. Applicant testified that SOR ¶¶ 1.a – 1.m were student loan debts accrued from the four-year period when she was unable to work. (Tr. 22) Her daughter was born with food allergies triggering seizures, requiring Applicant to stay home and care for the child. Her first husband was a low-paid teacher. (Tr. 23)

Applicant testified that some of her delinquent student loans were federal and owed to the DOE. Others were state-subsidized loans owed to the state student loan agency. (Tr. 23) She claims that her DOE student loans have been rehabilitated and will be consolidated into one payment in June 2018. (Tr. 24) She has also reached out to

² Department Counsel's briefcase was sidetracked en route to the hearing. I left the record open for him to submit the GEs to Applicant, which had already been provided in discovery, and allow Applicant time to object to any or all of the GEs. She did not raise an objection.

³ Unless stated otherwise, the source of the information in this section is Applicant's October 7, 2016 SCA. (GE 1)

KHEAA to inquire about rehabilitation programs. She provided a post-hearing letter from the Department of the Treasury indicating that Applicant's IRS tax refund was withheld in the amount of \$2,294 to apply to her DOE delinquencies. (AE B). Otherwise, she hasn't paid on her student loans for seven years. (Tr. 26)

Applicant testified that when she left her husband in 2016, she had \$30 in her bank account and she was earning very little. When she returned to the work force in 2012, she was earning \$250 every two weeks. (Tr. 25) She was unable to pay her bills. Now, she earns approximately \$46,000 per year, and her new husband earns \$20,000 per year. (Tr. 27)

SOR ¶¶ 1.l, 1.o, 1.s, 1.t, and 1.u are delinquent medical debts in connection with her daughter's health issues, that were placed for collection. Applicant testified that the child's father is supposed to pay for half of these medical expenses, but he has not done so. (Tr. 29) He does send her \$417 each month for child support. (Tr. 30) SOR ¶ 1.n is an insurance debt that she contends should have been paid by her ex-husband. She claims she removed herself from the insurance policy when they split. (Tr. 30) Similarly, SOR ¶ 1.f was for cable television that should be paid by her ex-husband since he supposedly kept the cable boxes. (Tr. 32) Applicant "disagrees" with SOR ¶¶ 1.q, 1.s, 1.t, and 1.u, but she has not reached out to the creditors or provided any evidence of dispute. All of her delinquent debts are listed in her credit reports.

Applicant testified that the debt alleged in SOR ¶ 1.r is for a bank credit card she used, and she is working on a payment plan. (Tr. 34) She provided no documents to substantiate her payment plan. Applicant testified that SOR ¶¶ 1.v through 1.z all relate to delinquent debts or judgment (1.x), which she does not deny owing, but disputes with her ex-husband about who owes this debt. (Tr.36-38) She plans to satisfy all of her delinquent debts in the future. (Tr. 37) She provided post-hearing documents showing a payment made on March 28, 2018, in the amount of \$149 on her federal student loans, and another one due on April 19, 2018 (AE A); and another document advising her to continue her \$5 per month payments to the collection agency for DOE, but her payment plan expires June 4, 2018. (AE C) She also produced a student loan rehabilitation packet showing that due to her increased annual salary, her DOE monthly payments increased from \$25 per month to \$232 per month as of May 2018. (AE D)

Applicant's financial issues started when she was out of the work force for four years caring for her sick daughter. Her problems worsened when she left her ex-husband and disputed with him many of their jointly held debts in 2016. Before that, she was diagnosed with a serious illness ten years ago. (Tr. 43) It is now in remission. Applicant has not had debt consolidation services or financial counseling. (Tr. 40) She does claim to have a budget, but it was not provided. Applicant stated her plan going forward is to address the larger delinquencies first and resolve those. She has not provided documentary evidence of a continuous stream of payments to establish a track record of repayments on any of her delinquent debts.

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 national security eligibility will be resolved in favor of the 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶18:

Failure 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant admitted to most of the delinquent debts alleged in the SOR. All are supported by her credit reports. 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 problems 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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

counseling service, and there are clear indications the problem is being resolved or is under control; and

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

Applicant has not resolved, or entered into a payment plan to resolve any of the alleged delinquent debts except for the student loans. She testified about a rehabilitation plan and provided evidence that she entered into one during the month before her hearing. It is too soon to conclude that she is making a continuous stream of monthly payments in the amount of \$232. She failed to take action on these delinquent student loans for over seven years. Applicant's eleventh hour efforts to enter into a student loan rehabilitation plan are too little, too late.

Applicant had compelling family and economic circumstances that explained some of her financial problems, including her ex-husband's low paying job, and caring for her daughter. These were factors beyond her control. She has since done little to contact creditors and to make payment arrangements. She disputes many of these just debts with her ex-husband, but acknowledges this is a private dispute. She repeatedly expressed her intent to resolve her debts at some future date. She has not followed through with a demonstrated track record of consistent payments pursuant to installment plans with her creditors. She has demonstrated no viable plan going forward. Applicant has not acted responsibly. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) do not apply. I am not satisfied that her delinquent debts are being resolved.

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(d):

(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.

