



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



In the matter of:)
)
) ISCR Case No. 18-01358
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

01/31/2019

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial security concerns arising from unpaid delinquent debts and taxes. National security eligibility for access to classified information is denied.

History of Case

On June 11, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR in writing on June 26, 2018 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 3, 2018. DOHA issued a Notice of Hearing on October 18, 2018, setting the hearing for November 6, 2018. The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified, called one witness, and offered Exhibits (AE) A and B into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on November 15, 2018. The record remained open until December 21, 2018, to permit submission of additional evidence. Applicant

timely submitted exhibits that she marked as AE 1 through 4. They are admitted without objection from Department Counsel.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, and 1.g. She denied those in SOR ¶¶ 1.c and 1.e. Her admissions are incorporated into these findings.

Applicant is 54 years old and never married. She has a 14-year-old daughter, whom she supports. She earned a bachelor's degree in 1988 and a master's degree in 1998. She began working for her current employer, a defense contractor, in September 2017. (Tr. 17-22)

Applicant earns \$106,000 annually. Prior to this position, she worked for another federal contractor from June 2016 to September 2017 and earned \$68,000 a year. She was unemployed from December 2015 to June 2016, after being laid off by a federal contractor for whom she worked from October 2012 to December 2015. She earned \$90,000 annually during those three years. (Tr. 22-23; GE 1)

Based on a credit bureau report (CBR) from November 2017, the SOR alleged seven financial security concerns: a 2015 Chapter 7 bankruptcy; a state tax debt; a retail store debt; an electric bill; an automobile repossession; a foreclosed mortgage; and a tollway debt. The debts accumulated between 2016 and 2017 and totaled \$28,133. (GE 3) The status of each allegation is as follows:

SOR ¶ 1.a: Applicant's financial problems were exacerbated when she was laid off in 2015 and unable to pay her bills. (Tr. 26) In October 2015, she filed a Chapter 13 bankruptcy in an effort to save her home from foreclosure.¹ The case was dismissed in April 2016 because she was unable to make the payments as a result of the layoff. None of the debts included in the bankruptcy were discharged. (Tr. 24-29)

SOR ¶ 1.b: The \$3,000 state tax debt from 2003 is unresolved. Applicant admitted that she owed the debt. (Answer) She said she tried to negotiate a resolution a year ago, but could not afford the state's offer. On the morning of this hearing, November 6, 2018, she made a \$310 payment on a repayment plan she established, which requires her to make monthly payments of \$60. This debt was included in her Chapter 13 bankruptcy. Applicant said she had been disputing this debt for years. (Tr. 29-33, 63, 73; GE 2; AE A) Post-hearing, she submitted a document indicating that the debt was deleted from her credit report. However, that document is insufficient to prove that she paid the debt or is no longer responsible for it, given her admissions and the documentary evidence indicating that it is her debt. (AE 1) This debt is unresolved.

¹ The bankruptcy petition included \$37,523 in accounts, including \$29,000 of student loans. It also recorded a \$3,000 state tax debt. (GE 2)

SOR ¶ 1.c: This \$841 delinquent debt is owed to a retail store for a 2015 purchase. Applicant credibly stated that she did not owe it and had notified the store that she had returned an item in question. She hired a credit repair company to dispute it. (Tr. 34-37) It was removed from her credit report in December 2018. (AE 1) This debt is resolved.

SOR ¶ 1.d: The \$110 unpaid electric bill is resolved. Applicant credibly said she paid it in 2017. (Tr. 38-39) It was removed from her credit report in January 2018. (AE 1)

SOR ¶ 1.e: Applicant admitted that she owed the \$18,932 debt for an automobile repossession. (Answer) She purchased a \$26,000 car in May 2013 and stopped making payments in 2015 after her layoff. She never made a subsequent payment on the debt. She spoke to the creditor in July 2018 about resolving it. She was unable to settle the debt for \$8,000, as offered by the creditor, because she did not have enough money. A week prior to this hearing, she contacted an attorney to inquire about resolving the debt. (Tr. 39-43) It is unresolved.

SOR ¶ 1.f: In December 2009, Applicant purchased a home. Between 2012 and 2013, she had difficulty paying her monthly \$2,000 mortgage payment and the \$460 homeowner's assessment. She subsequently obtained a loan modification that resulted in a minor decrease in the monthly payment in 2013. In October 2015, the bank foreclosed on the property. In January 2017, the bank completed the foreclosure, sold the property, and gave Applicant \$2,000 as a payoff. (Tr. 24-29) This allegation is resolved.

SOR ¶ 1.g: In August 2018, Applicant established a payment plan to resolve a \$5,250 debt owed to a county for unpaid fines and tolls from 2016 and 2017. She agreed to begin making monthly payments of \$225 in August 2018. As of that date, the debt's balance was listed as \$2,791.² She testified that she had not made the October 2018 payment. (Tr. 43-26; AE B) This debt is unresolved.

Applicant submitted a budget. Her net monthly income is \$6,200. Her expenses are \$5,455, and include a \$60 payment for her state tax debt; a \$100 payment on the tollway debt; and a \$65 payment to the Internal Revenue Service for a 2016 Federal tax debt of \$4,000. She started that payment plan a month ago.³ She recently consolidated her student loans and was scheduled to make monthly payments of \$195 toward that debt. She made a payment in October 2018. Her student loans total \$28,000. She has about \$745 remaining at the end of the month that she uses for other expenses. She has not participated in credit or budget counseling. (Tr. 49-52, 58, 72-74; AE 4)

A human resources (HR) individual from Applicant's employer testified. He knows that this proceeding involves Applicant's finances, but has not reviewed the SOR. He has

²It is not clear why there is a difference in alleged balance and listed balance on the county's document.

³The SOR did not allege the Federal tax debt for 2016 as a security concern. Thus, it will not be considered in analyzing disqualifying conditions. It may be considered in the analysis of mitigating conditions and the whole-person concept, and an evaluation of Applicant's credibility.

known Applicant for over a year. He said she has been a successful member of her team. He had nothing negative to report. (Tr. 76-79)

Policies

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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD after on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified

information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes conditions that could raise security concerns. Four may apply in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local tax as required.

Applicant has a history of financial difficulties that began between 2012 and 2013 when she started experiencing problems paying her mortgage. In 2015, she filed a Chapter 13 bankruptcy that was dismissed six months later because she was unable to make payments. Subsequently, the bank foreclosed on her property. She has an unpaid state tax debt, a county tollway debt, and an unresolved automobile repossession debt. She had two smaller debts. The financial problems are documented by her admissions, a CBR, and other evidence. Other than the utility debt, she has been unwilling to fully

satisfy or resolve her debts until after receiving the SOR in June 2018. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following may potentially apply:

- (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, 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 that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Some of Applicant's financial obligations remain ongoing and unresolved. There is insufficient evidence to demonstrate that similar delinquent debts are unlikely to recur. She did not establish mitigation under AG ¶ 20(a). Applicant presented evidence to establish partial mitigation under AG ¶ 20(b). She was unemployed for seven months between 2014 and 2015, which contributed to some financial delinquencies and was a circumstance beyond her control. In October 2015, she filed a Chapter 13 bankruptcy as a method to manage debts; however, after the bankruptcy was dismissed six months later, there is no evidence that she took additional steps to responsibly resolve the delinquent debts. Applicant did not provide evidence that she participated in credit or financial counseling and that her financial and tax delinquencies are sufficiently under control, as required under AG ¶ 20(c).

After receiving the SOR in June 2018, Applicant began addressing the outstanding 2003 state tax and unpaid tollway debts from 2016 and 2017. She has not taken any significant steps to resolve the automobile repossession. There is insufficient evidence documenting good-faith efforts by her to resolve debts, as required to establish mitigation under AG ¶ 20(d). Applicant successfully disputed the debts in SOR ¶¶ 1.c and 1.d. AG ¶ 20(e) applies to those debts. The evidence establishes minimal mitigation under AG ¶ 20(g) as to the alleged tax given the fact that her actions to resolve it through a payment plan is recent and she does not have a history of complying with it.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent 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(d) were addressed under that guideline, but some warrant additional comment.

Applicant is an educated individual, who has consistently worked for federal contractors since 2012, except for seven months when she was unemployed. She has earned a reasonable salary over those years, and currently earns over \$100,000. Her HR representative stated she was a valued employee. These are positive factors in this case. However, several facts remain concerning. Applicant has a history of being unable or unwilling to responsibly manage her financial obligations. She has failed to resolve a 2003 state tax debt and a county debt owed for unpaid tolls from 2016 and 2017, both of which she has known about for a couple years. She recently started paying an outstanding 2016 Federal tax debt. She did not seriously begin addressing the alleged debts until she received the SOR. At this time, she has not established a solid record of responsibly managing her finances, taxes, and delinquent debts. Overall, the record evidence leaves

me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 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:		Against Applicant
Subparagraph 1.f:		For Applicant
Subparagraph 1.g:		Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge