



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 18-01360
)
)
Applicant for Security Clearance)

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

03/19/2019

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns related to unpaid delinquent debts. Based on a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Statement of the Case

On May 23, 2018, 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing on May 23, 2018, and requested that her case be decided by an administrative judge on the written record without a hearing (Answer). On October 17 and November 6, 2018, Department Counsel mailed Applicant the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was received by her on November 9, 2018. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted additional information, and did not object to the Government's Items. I marked that information as Applicant Exhibit (AE) A. Items 1 through 8 and AE A are admitted into evidence without objection. DOHA assigned the case to me on February 7, 2019.

Findings of Fact

Applicant denied ten of the eleven allegations contained in the SOR and provided explanations. She admitted the allegation in ¶ 1.e. (Item 3)

Applicant is 36 years old and married since 2012. She has a seven-year-old child. She has earned some college credits. She has worked for federal contractors since 2006 and has held a security clearance since 2008. (Item 4)

In May 2016, Applicant submitted an electronic Questionnaires for Investigations Processing (e-QIP). In February 2018, she was interviewed by a government investigator about her background and financial delinquencies. The investigator inquired about 12 medical debts that became collection accounts in 2015 and appeared on her July 2016 credit bureau report (CBR). Applicant stated she did not recognize 10 of the accounts, but would investigate them. She said she had two medical debts that she could not pay after her son's birth in April 2012, because she did not have enough money. She said she subsequently paid them. (Item 8)

Based on the July 2016 CBR, the SOR alleged 11 delinquent medical debts that totaled \$19,367. They arose between August 2011 and December 2012, and became collection accounts between September 2015 and November 2015. In her Answer to the SOR, Applicant stated that she was only responsible for one debt, ¶ 1.e.¹ She said she was making payments on it and had lowered the balance. She did not submit proof of her assertion. She stated that she had no knowledge of the other 10 alleged debts. (Items 3, 8)

With her Answer to the SOR, Applicant provided an August 2016 document from a credit-reporting agency indicating that it deleted numerous debts after investigating the disputes she filed regarding them. The following debts were disputed and deleted: ¶ 1.c for \$3,528; ¶ 1.g for \$757; ¶ 1.h for \$625; and ¶ 1.i for \$584. Applicant did not provide evidence documenting the basis for her disputes or the deletions. (Item 3)

¹ In her Answer, Applicant confused two SOR debts. She misstated the amount of the alleged debt in ¶ 1.e as \$2,936. The correct amount in ¶ 1.e is \$1,859. The amount of \$2,936 is alleged in ¶ 1.d, and is seemingly the debt she said she is paying. (Item 3)

Applicant submitted a November 2016 credit report from another credit-reporting agency noting that the following debts were “no longer on file” and removed from her credit report: ¶ 1.a for \$3,806; ¶ 1.b for \$3,717; ¶ 1.d for \$2,936; ¶ 1.f for \$811; and ¶ 1.j for \$375. She did not provide any evidence documenting the basis for removal of the debts from her credit report, such as they were wrongly reported, or the debts were paid. She stated that she also needed to have the credit bureaus remove the debt alleged in ¶ 1.k for \$369, but gave no reason. (Item 3)

Applicant submitted a document confirming that she had participated in a credit restoration program since August 2016. The program provides budget and credit counseling services. (AE A) She did not provide a budget or other information related to her financial obligations from which to determine current financial reliability or compliance with payment agreements.

Applicant provided performance evaluations for 2017, 2016, 2015, and 2014. All of the evaluations consistently rate her as “meeting expectations” and “exceeding expectations” in various categories. (AE A)

Policies

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 and mitigating conditions, which are useful 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 AG ¶ 2 describing 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.

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 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 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 information.

Section 7 of Executive Order 10865 provides that an adverse decision 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 concerns relating to the guideline for financial considerations are 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. Financial distress can also be caused by 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 greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive

presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so"; and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The record establishes the above disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 sets out five conditions that could potentially mitigate financial security concerns under this guideline:

(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 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; 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.

With support from substantial record evidence, the SOR alleges 11 medical delinquent debts totaling \$19,367, which arose over a period of two years. Applicant did not produce evidence that the delinquent debts happened so long ago; that they occurred

under circumstances that are unlikely to recur; or that they occurred under circumstances that were beyond her control and she acted responsibly under the circumstances. There is no evidence to establish mitigation under AG ¶¶ 20(a) or (b).

Applicant produced evidence that she has been enrolled in a program since August 2016 that provides credit and budgetary services; however, she did not provide credible evidence that her delinquent debts are paid, resolved, or under control. AG ¶ 20(c) applies minimally. Applicant said she was making payments on one debt, but failed to submit proof of those payments. AG ¶ 20(d) does not apply.

Applicant reported that 10 of the 11 delinquent debts alleged in the SOR have been deleted or no longer appear on her credit report, implying that she is not responsible for them. In order to establish mitigation under AG ¶ 20(e), Applicant must provide evidence that she had a reasonable basis to dispute the legitimacy of the past-due debts or otherwise took actions to resolve the issues. The fact that a creditor has charged off or deleted a debt is not a valid basis to mitigate a debt under AG ¶ 20(e). “Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved.” ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) (citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015)). Applicant failed to establish mitigation under this guideline for security concerns arising from any of the debts.

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(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) 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 national security eligibility must include 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 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 a 36-year-old woman who has worked for defense contractors since 2006, and held a security clearance since 2008. Her employer commends her work performance. During 2011 and 2012, she accumulated 11 delinquent medical debts that were sent to collection agencies in 2015, as reflected on a later credit report. In 2016, 10 of those debts were deleted from her credit report or no longer appear on it. As a result, she asserts no responsibility for their resolution and provides no explanation for the circumstances underlying them or basis for filing disputes. Those alleged debts totaled over \$19,000 and remain relevant in evaluating her eligibility to hold a security clearance. Applicant said she was resolving a \$2,900 debt, but did not provide documentation confirming payments on it. Overall, she did not provide sufficient evidence of debt resolution.

The record evidence leaves me with doubt as to Applicant's judgment and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 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 a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge