



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



In the matter of:)
)
) ISCR Case No. 18-01465
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2019

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On June 7, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on July 11, 2018, and requested a hearing before an administrative judge. (Answer.) A subsequent email from Applicant requested that the hearing be converted to a decision on the written record in lieu of the hearing. Department Counsel submitted the Government’s file of relevant material (FORM) on August 28, 2019. Applicant did not object to the Government’s evidence and identified as Items 1 through 6. Applicant received the form on September 11, 2019. The case was assigned to me on November 19, 2019. Applicant responded to the FORM and presented documents.

Findings of Fact

Applicant, age 51, is divorced and has two children. She obtained her undergraduate degree in 2011 and her master's in 2013. Applicant completed her security clearance application on August 10, 2017. She has never held a security clearance. (Item 3) Applicant has been employed with her current employer since 2003, as an electrical engineer.

The SOR alleges that Applicant has delinquent debt in the approximate amount of \$63,756. (Items 5, 6) The debts include a charged-off home equity loan, various medical bills, and a charged-off credit card. (Item 1) Applicant admitted the allegations with the exception of four minor debts (1.c-1.f), which she avers that she paid in February 2018. (Item 2) She provided explanations for each allegation.

Applicant acknowledged her debt, but she denied that she is not doing anything about it. She stated that most of the debt that is concerning medical issues is due to many surgeries and high insurance deductibles. She is taking care of her current partner financially while he awaits his social security disability hearing. He does not work. She does not agree that looking at her credit card reports make her a person who has poor self-control and is financially unstable. (Item 2)

Applicant stated that as to SOR allegation 1.a, the home equity loan for about \$43,026, is the result of a loan that she and her ex-husband opened in 2005, and he was not paying child support. She disclosed on her SCA that she became behind in payments and is now working with a company to establish a repayment plan. She has been paying \$179.98 monthly since March 2018. She submitted recent receipts and a statement to show that the balance is \$40,316. (Response to FORM, Item 4)

As to SOR 1.b, a charged-off account in the amount of \$14,068, Applicant acknowledged the debt and stated that she is working with them currently to establish repayment terms. She provided information that she hired a lawyer and signed an agreement for garnishment of \$200 per pay period. The garnishment started in September 2018, and the remaining balance is \$13,286.

As to the medical accounts listed in SOR 1.c-1.f, Applicant denied the accounts because she stated that she paid them in February 2018. There is not documentation to confirm her assertion.

The remaining medical accounts listed in the SOR 1.g -1.k have not been paid. In Applicant's 2017-2018 investigative interview, she takes responsibility for some of them and she disputes some of the accounts. There is no indication that she has addressed the accounts, although she stated in her interview that she would look in to them and has been "paying them down." (Item 4) Her intent is to pay all her accounts that are delinquent. Her goal is to pay all delinquent accounts in two to three years. (Item 4)

Applicant stated that she took money from her 401(k) retirement account to help her former husband, and that left her in a troublesome financial situation. She believes he is in jail at this time. In Applicant's response to the FORM, she mentioned that she is disputing certain accounts on her credit report through the various reporting agencies. However, she did not specify which accounts or provide any documentation reflecting a dispute. (Item 4)

Applicant has not had any financial counseling. There is no information in the record concerning a salary or budget. She did not report any unemployment. (Item, 3)

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 (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, "Any 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. 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, 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 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 EO 10865, “Any 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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 greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 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; and

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

Applicant's delinquent debts are long-standing, and she acknowledged that she has not resolved them. She recently started a repayment plan for the home equity loan. She has been on notice that her financial situation is of concern to the Government for almost two years. She also learned of the accounts in her 2017 OPM interview. It is not clear from the record, except for the medical accounts, what events were beyond her control and the specific nexus for the unresolved accounts. Applicant stated that she paid a few of them, but provided no documentation. Thus, from the record, it cannot be determined if she applied any good-faith efforts until last year. She also recently entered into a garnishment agreement in late 2018 with the creditor in SOR 1.b. In her response to FORM, she stated that she has disputed some accounts, but did not specify which accounts. Without documentary evidence of more efforts, she has not demonstrated a track record of financial responsibility, and there is no indication that her financial situation is under control. She has not received financial counseling. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved, but she promises to address them.

AG ¶ 20(b) is not established. While Applicant's surgeries were beyond her control, she has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling; nor are there clear indications that her financial situation is under control. Her current ability to pay her delinquent debts is in doubt as she stated that she lives on some savings. Her financial problems are not under control.

Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.b through 1.k. against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including Applicant's work career and medical issues, I conclude that Applicant has not mitigated the security concerns raised by her financial indebtedness. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b:-1.k:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge