



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 18-01495
)
)
Applicant for Security Clearance)

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

08/14/2019

Decision

DAM, Shari, Administrative Judge:

Applicant has a significant amount of delinquent debt that she only recently began to resolve. She did not mitigate the resulting financial security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On June 12, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. Applicant answered the SOR in writing (Answer) on July 6, 2018, and requested a hearing before an administrative judge.

On February 7, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On February 12, 2019, DOHA issued a Notice of Hearing setting the case for February 27, 2019. Pursuant to Applicant's request, the hearing was cancelled and the case was continued. On May 15, 2019, DOHA issued a Notice of Video Teleconference Hearing scheduling the case for June 12, 2019. The hearing was held as

scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through K into evidence. All aforementioned exhibits were admitted. Applicant's Counsel identified AE L through Q for the record, but did not offer them into evidence because he did not have sufficient copies of them for Department Counsel. The record remained open until July 8, 2019, to give Applicant's Counsel time to provide Department Counsel copies of AE L through Q, and any additional documents Applicant's Counsel deemed pertinent. He timely submitted AE L through Q and R through T. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on June 20, 2019.

Procedural Matter

At the commencement of the hearing, Department Counsel moved to amend the SOR to add two allegations:

SOR ¶ 1.p: You filed for Chapter 13 bankruptcy in February 2019. As of the date of your hearing, the bankruptcy petition remains pending.

SOR ¶ 1.q: You are indebted to the Internal Revenue Service (IRS) for delinquent taxes in the approximate amount of \$2,000, as of the date of your hearing. The tax debt remains unresolved.

Applicant did not object to the amendments. She admitted the allegation in SOR ¶ 1.p. She denied the allegation in in SOR ¶ 1.q. (Tr. 7-9)

Findings of Fact

Applicant admitted the allegations ¶¶ 1.a through 1.p of the SOR. She denied the allegation in ¶ 1.q. Her admissions are incorporated into these findings.

Applicant is 47 years old. She is separated from her husband. They have a nine-year-old daughter. Applicant has custody of the child. Applicant has a master's degree in technology. She began working for her current employer in June 2017. (Tr. 21-22)

Applicant started experiencing financial problems after she was laid off from a position she had held for ten years in May 2006. She was then unemployed from June 2006 to December 2006. In 2010, 2011, and 2012, she was unemployed for a month or more between positions. She was unemployed from May 2014 until May 2015, after another layoff. She lost her previous job, subsequent to knee surgery in March 2017, because she was arriving at work late. She remained unemployed for two months, until she started her current position with a defense contractor. (Tr. 29-32, 39; AE A) In addition to those periods of unemployment, Applicant had medical issues, house maintenance emergencies, unexpected car repairs, and daycare expenses, which contributed to her financial delinquencies. (Tr. 32-35)

Based on credit bureau reports (CBRs) from October 2017 and April 2018, the June 2018 SOR alleged 15 debts that are delinquent, charged off, or in collections. They include: a \$25,061 delinquency on a \$331,628 mortgage; past-due credit cards; and unpaid medical and miscellaneous bills. These totaled about \$42,000, and became delinquent between 2013 and 2017. (GE 2, GE 3)

On February 2, 2019, Applicant filed a Chapter 13 bankruptcy petition. In April 2019, she started making monthly payments of \$380 to the bankruptcy trustee. As of the hearing date, she has made three payments. (Tr. 42; AE L, M) According to documents in that petition, Applicant owes \$113,777 in non-priority unsecured claims and \$108,891 in secured claims. (AE S) All of the alleged SOR delinquent debts, including a federal tax debt, are included in this bankruptcy. (Tr. 23-24) Applicant said that some debts included in the bankruptcy are not delinquent.

In her Chapter 13 bankruptcy petition, Applicant listed the IRS as a creditor, to whom she owes \$2,000 for unpaid Federal taxes. (AE S) However, she denied owing any taxes during her testimony. (Tr. 44) According to her Federal tax return for 2018, which was recently filed, she does not owe any additional taxes for 2018. (AE S) She did not provide proof from the IRS confirming that she does not have an outstanding tax debt for 2018 or previous years.

Applicant earns \$104,000 annually. (Tr. 46) She earned \$85,000 in 2016; \$78,000 in 2017; and \$80,000 in 2018. (Tr. 40, 58; AE S) According to the Chapter 13 petition, Applicant's net monthly income is \$5,500 and her monthly expenses are \$1,100. She said that she has spent the additional money on doctor and lawyer fees, house and car repairs, and incidental childcare costs over several months. She does not keep a current written budget. (Tr. 49-50) She has about \$22,000 in a savings account and \$150,000 in a retirement account. (Tr. 51)

Applicant submitted three letters of recommendation. A former colleague, who has known Applicant for 13 years, stated that she is trustworthy, competent, and knowledgeable. (AE O) A friend, for many years, has worked with Applicant as a volunteer for community organizations and boards. He complimented her for her financial integrity as displayed in different projects. (AE P) A pastor from Applicant's church stated that Applicant is responsible, trustworthy, and a leader. (AE Q)

Applicant testified candidly about her financial problems. She is remorseful and committed to resolving her debts through the Chapter 13 bankruptcy. (Tr. 35) She completed credit counseling and debtor education courses through the bankruptcy court. (AE I, J)

Policies

This case is adjudicated 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.

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 to generate funds.

AG ¶ 19 sets out three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability to satisfy debts;
- (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 income tax as required.

Based on her admissions and credit reports, Applicant accumulated 15 delinquent debts between 2013 and 2017, which she did not begin to address until February 2019 when she filed a Chapter 13 bankruptcy petition. She also has an outstanding Federal tax debt. The record evidence establishes security concerns under AG ¶¶ 19(a), 19(c), and 19(f).

AG ¶ 20 sets out five conditions that could potentially mitigate those 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, 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; 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.

Applicant began accumulating delinquent accounts in 2013, which she did not diligently address until February 2019, after receiving the SOR in June 2018. To date none of alleged debts or tax debt is paid or resolved. AG ¶ 20(a) does not apply.

Applicant attributed her financial delinquencies to sporadic periods of unemployment over the years as a result of layoffs, and unexpected emergencies related to medical conditions, house repairs, and being a single mother. Those circumstances have been beyond her control; however, one period of unemployment resulted after she was terminated from a position for tardiness. She did not establish full mitigation under AG ¶ 20(b) because she failed to provide evidence that she responsibly managed her debts under those circumstances and throughout those periods.

In February 2019, Applicant completed credit counseling and debtor education courses in conjunction with filing for bankruptcy. She provided proof that all SOR debts are included in that bankruptcy, and that she made three payments into the plan to begin resolving them. There is some evidence that those debts are coming under control, establishing limited mitigation under AG ¶ 20(c). The evidence establishes minimal mitigation under AG ¶ 20(d) as to all debts because she waited a long time to make a post-SOR good-faith effort to begin resolving her financial issues. There is no evidence that Applicant has resolved or is resolving the alleged Federal tax debt. AG ¶ 20(g) does not apply.

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 an educated woman who has worked for a Federal contractor since the June 2017. Her financial problems began in 2013 and continue into the present. She credibly asserted that she has had periods of unemployment and unexpected emergencies since then that affected her ability to resolve her debts. While those are valid explanations, she did not initiate diligent efforts to address her significant number of delinquent debts until February 2019 through bankruptcy. Although learning of the Government's security concerns in June 2018, she did not submit proof that she paid or resolved any of the debts, including a small medical debt for \$122. Rather, she waited almost a year to take responsible actions. She did not submit a budget indicating that she has the ability to resolve her debts or avoid future overspending. She appears to be committed to making payments into her bankruptcy plan, but has not yet established a sufficient track record of doing so. Nor has she resolved a tax debt, which is listed in her bankruptcy.

The record evidence leaves me with doubts as to Applicant's suitability for a security clearance at this time. Applicant failed to mitigate all of 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.q:

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