



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 18-01692

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel

For Applicant: *Pro se*

03/15/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On July 2, 2018, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Adjudicative Guidelines (SEAD 4), effective June 8, 2017.

Applicant responded to the SOR on July 16, 2018, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 28, 2018, interposed no objections to the materials in the FORM, and did not supplement the FORM. The case was assigned to me on January 2, 2019.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated six delinquent debts exceeding \$8,000 and (b) filed for Chapter 13 bankruptcy relief in August 2016 (dismissed in February 2018) and March 2018 (disposition undetermined). Allegedly, the debts owing have not been resolved and remain outstanding.

In her response to the SOR, Applicant admitted all but one of the allegations and did so with explanations, denying only the allegations covered by SOR ¶ 1.h. She claimed she stopped making payments on her 2016 Chapter 13 petition when she went on medical leave, which resulted in a dismissal of her petition. She claimed she is currently making payments on her 2018 Chapter 13 petition. And she claimed the 2015 judgment (covered by SOR ¶ 1.h) has been satisfied. Applicant did not provide any documentation to support any of her claims.

Findings of Fact

Applicant is a 47-year-old quality inspector for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married her first spouse in November 1991 and divorced in January 1995. (Item 3) She has one child and one stepchild from this marriage. (Items 3-4) She remarried in June 1999 and has four children and one stepchild from this marriage. (Items 3-4) She earned a high school diploma in May 1990. (Item 4). She attended a local community college between January 2007 and August 2009, but earned no degree or diploma. (Items 3-4) Applicant reported no military service. She has been employed by her current employer since October 1999 and has held a security clearance since April 2010. (Item 3)

Applicant's finances

Applicant filed for Chapter 13 bankruptcy protection in 1999, 2003, 2016, and 2018. (Items Records confirm that her 1999 and 2003 petitions were discharged in January 2000 and March 2009, respectively. (Items 9-10). Bankruptcy records confirm that her 2016 petition was dismissed in February 2018 at Applicant's request. (Item 8) She cited medical leave as a consideration, but provided no documentation. (Item 2) Applicant's latest Chapter 13 petition remains pending without any reported status or disposition. (Item 7)

Between March 2016 and June 2016, Applicant took out three loans with the same lender, totaling in excess of \$5,000. (Item 4) Two of the loans became over 120 days past due in November 2016, and the third loan became more than 90 days past due in November 2016. (Item 4) Other delinquent debts revealed in her credit reports are a medical debt for \$178 (SOR ¶ 1.e) and an entered judgment in 2015 for \$1,261. (Items 4-5) Whether Applicant included these debts in his 2018 Chapter 13 petition is unclear. Without documented Chapter 13 schedules to review, answers cannot be learned. (Items 5-7) Applicant attributed her debt delinquencies to both her husband's illness and loss of employment and her own loss of earnings stemming from a lengthy medical leave. (Items 2 and 4) While her husband's condition and circumstances, as well her own medical issues, are potentially extenuating, they are not corroborated and substantiated by documented support for her claims.

To date, Applicant has not provided any updates as to what steps she has taken to resolve the delinquent debts covered in the SOR. Conceivably, these debts are scheduled in her 2018 Chapter 13 petition and are being addressed. Without more information from Applicant on debts included in her Chapter 13 petition and how they are being administered in her Chapter 13 petition, no inferences can be drawn as to how she is resolving these debts. (Items 4-6)

Applicant provided no budgets or evidence of financial counseling. Nor did she provide character references from colleagues at work and in her community who know her well and can attest to her honesty, trustworthiness, and good judgment, or .personnel evaluations.

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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 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 of 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. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the

Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant’s history of multiple filings of Chapter 13 bankruptcy petitions seeking to address her finances (two discharged, one dismissed at her request, and a fourth still pending) and more recently, accumulating delinquent debts exceeding \$8,000. Applicant’s recurrent Chapter 13 petitions and debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations.”

Applicant’s admitted delinquent debts and foreclosures negate the need for any independent proof. See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s admitted state tax lien, home equity loan deficiency, and two foreclosures are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Historically, the timing of addressing delinquent debts is critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant’s cited extenuating circumstances (i.e., medical issues and associated unemployment of her husband and her own medical issues that necessitated considerable medical leave) provide some mitigation credit for her accumulating delinquent debt. The cited circumstances she attributes to her debt delinquencies are enough to entitle her to some extenuating

