



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-02256
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

10/22/2019

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. She provided sufficient evidence showing her actions to pay or otherwise resolve the delinquent obligations listed in the Statement of Reasons (SOR). Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On October 12, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her.

The DoD CAF acted 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On October 30, 2018, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (SOR Response) On March 21, 2019, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on April 10, 2019.

Six Government exhibits (Ex. 1 – 6) and three Applicant exhibits (Ex. A – C) were admitted into evidence without objection at the hearing. The record was held open following the hearing to allow Applicant to submit additional documentation. On May 2, 2019, eight additional documents were received and admitted into evidence without objection as Ex. D – K. Applicant and her cohabitant testified, as reflected in a transcript (Tr.) received on April 19, 2019.

Findings of Fact

In Applicant's answer to the SOR, she admitted the delinquent obligations set forth in the SOR and indicated she was establishing repayment plans with her creditors. After a thorough review of the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 45-year-old over-the-road truck driver who has worked for a defense contractor since May 2017 and seeks to obtain a security clearance. Her income is dependent on the number of loads she hauls. (Tr. 28) Her income last year was between \$35,000 and \$40,000, which included \$628 monthly from her ex-husband's military retirement. (Tr. 35, 40, 61) From August 1993 through September 1994, she honorably served in the U.S. Air Force. (Tr. 65) In 1993, she had been granted a secret security clearance. She left the Air Force in 1994 due to her pregnancy. (Tr. 65) She has two daughters ages 24 and 21. (Ex. 1, Tr. 32) In April 2010, she was divorced having separated from her ex-husband in 2008. (Tr. 22)

Applicant's current partner is also an over-the-road truck driver who holds a DoD security clearance. (Tr. 68) Applicant and her partner both have their Transportation Security Administration (TSA) clearance. (Tr. 72) Applicant and her partner hope to save \$30,000 over the next five years in order to purchase their own truck. (Tr. 73)

Following her divorce, Applicant lived with a girlfriend who caused serious financial problems. Applicant was the only one working and had difficulty controlling her friend's spending. (Tr. 25) Applicant was an assistant store manager making ten dollars per hour. (Tr. 26) In September 2013, the relationship with the friend ended. (Tr. 25) From April 2014 through January 2016, Applicant was unemployed. (Ex. 1, Tr. 77) She has lived with her cohabitant since January 2014. (Ex. 1)

On Applicant's September 2017 Electronic Questionnaires for Investigations Processing (e-QIP), she indicated she had filed for Chapter 7 Bankruptcy protection in 2012. (Ex. 1, Ex. D) She had been unemployed from March 2011 through October 2011.

(Ex. 1, Tr. 77) The bankruptcy listed assets of \$40,585 and liabilities of \$78,884. (Ex. 1, Ex. 3) A mobile home/trailer was surrendered during the bankruptcy and her debt was discharged in the bankruptcy proceedings. (Ex. 2) She did not list any financial delinquencies on routine accounts on her e-QIP, other than the bankruptcy.

The SOR lists 13 past due, charged-off, or collection accounts totaling \$33,483. Four of the debts totaling \$14,147 were for student loans. (Tr. 46) Applicant's student loan obligations represents 42 percent of her total delinquent obligations. Applicant has contacted 11 of the 13 creditors and set up payment arrangements or, in some cases, has paid off the debts. (Tr. 12) She intends to pay all of her delinquent accounts. (Tr. 12) She contacted the creditor for a \$609 medical debt (SOR ¶ 1.n) and was told the account could no longer be found. (Tr. 55) She is continuing to pursue this obligation. (Tr. 55) The other creditor she has been unable to reach was the holder of the vehicle debt (SOR ¶ 1.b). (Tr. 55, 60)

In Applicant's April 2018 Enhanced Subject Interview, she indicated she was unemployed from March 2014 through January 2016. (Ex. 2) Following her divorce, she lived with a girlfriend who contributed to Applicant's financial problems leading to the bankruptcy. Applicant's credit score was almost 800 before this girlfriend caused her financial difficulties. (Ex. 2) Applicant had two car payments, but could not afford to pay both of them after she became unemployed. In late 2012 or early 2013, she had purchased a \$17,000 vehicle. (Tr. 58) In 2015, one vehicle was voluntarily repossessed resulting in a \$16,536 debt (SOR ¶ 1.b) being charged off in September 2015. (Ex. 2) As of June 2018, the balance on the debt was \$14,165. (Ex. 5, Ex. 6) It took the creditor over a year to repossess the car after being told to come and get it. (Ex. 2) She is continuing in her efforts to reach the creditor. (Tr. 59)

The \$549 credit card collection account (SOR ¶ 1.g) was a credit card account opened after the bankruptcy. (Ex. 2, Ex. 4, Ex. 6) Applicant entered into a repayment with the collection agency to make \$25 monthly payments on the debt. (Tr. 52) She has made her required payments from March 2019 through September 2019. (Ex. A, Ex. I, Ex. J)

Applicant attended a university for four semesters in 2015 and 2016. She obtained four student loans, one each for the four semesters. Two of the loans (SOR ¶ 1.c, \$6,868 and SOR ¶ 1.d, \$6,629) have been placed for collection. (Ex. 4, Ex. 5, Ex. 6) Her other two loans were \$322 (SOR ¶ 1.k with a \$3,500 balance) and \$328 (SOR ¶ 1.l with a balance of \$3,500) are 120 days or more past due. (Ex. 4, Ex. 5) In November 2018, she entered into a rehabilitation plan with the U.S. Department of Education whereby she would make \$5 monthly payments, an amount calculated on her income. (Ex. E, Tr. 43, Tr. 47) From November 2018 through September 2019, she made her monthly payments as required. (Ex. A, Ex. I, Ex. J) She has requested to continue payments by automatic withdrawal from her bank account starting in November 2019, which will put her on a regular payment plan. (Ex. I, Tr. 20) Applicant intends to give priority to resolving her other debts before significantly increasing her student loan payments. (Ex. 2)

Following her divorce, Applicant did not have health insurance and when she obtained a job, her health insurance did not cover the entire cost of medical treatment. She underwent gall bladder surgery and had a separate treatment for a broken foot. (Tr. 77, 78) She has two medical collection accounts of \$618 (SOR ¶ 1.f) and \$609 (SOR ¶ 1.n). She also is delinquent on a third medical account of \$469 (SOR ¶ 1.h). (Ex. 4, Ex. 5, Tr. 42) She has a repayment agreement on the third account whereby she pays \$78 monthly since March 2019. (Tr. 49) In October 2018, Applicant entered into a repayment agreement with the holder of the \$618 medical debt to pay \$51.56 monthly on the debt. (Ex. A, Ex. B, Ex. H, Ex. I, Ex. J, Tr. 53) She honored the agreement and paid off the debt in August 2019. (Ex. I)

The \$249 charged-off account (SOR ¶ 1.j) for a utility bill was paid in full in March 2019. (Ex. C, Tr. 53) The \$802 collection account (SOR ¶ 1.e) was a credit card account. (Ex. 2, Ex. 4, Ex. 5) In November 2018, the creditor offered to settle the debt for \$401, which Applicant accepted and paid. (Ex. H, I, Tr. 60)

Applicant owed a collection agency \$1,468 (SOR ¶ 1.m) for a telecommunications debt. (Ex. 4) In March 2019, she made a repayment agreement with the creditor to pay \$118 monthly for 11 months. (Ex. G, Tr. 50) Starting in March 2019, she made her monthly payments on the debt. (Ex. A, Ex. H, Ex. I, Ex. J) As of August 2019, she owed only one more payment on a balance of \$118. (Ex. I) A collection agency was attempting to collect \$407 (SOR ¶ 1.i) for a credit card. (Ex. 2, Ex. 4, Ex. 6) In March 2019, she entered into a repayment agreement with the creditor to pay \$89 monthly for three months. (Ex. F, Tr. 52, 54) In April 2019, May 2019 and June 2019, she honored the repayment agreement by making the \$89 monthly payments on the debt. (Ex. A, Ex. H)

Applicant is current on her \$450 monthly rent, her \$392 monthly loan payments on her 2008 vehicle, and the \$628 monthly payments on a 2011 motorcycle. (Tr. 36-37, 83) She can afford her monthly obligations. (Tr. 39) Applicant asserts she has matured and thinks more about the future. (Tr. 62) Her children are now older and less dependent on her for financial support. (Tr. 82)

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 list potentially disqualifying conditions and mitigating conditions, which must be considered 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a

number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal 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) (citation omitted) 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 having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing that matters in mitigation apply. Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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, 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

(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.

Applicant purchased a vehicle in 2012 and voluntarily surrendered it. She was unable to make the monthly payments. It was over a year before the creditor came to collect the vehicle after Applicant informed them to come and get it. Once the vehicle was repossessed and resold, Applicant owed \$14,165. She has attempted to reach the creditor to establish a settlement of this debt. This debt and a \$609 medical debt are the only two obligations Applicant has yet to address.

Following her divorce, she lived with a girlfriend who caused her serious financial problems. In 2013, the relationship with the friend ended. (Tr. 25) From April 2014 through January 2016, Applicant was unemployed. (Ex. 1, Tr. 77) She has lived with her current partner since January 2014. (Ex. 1)

Seven years ago, Applicant filed for Chapter 7 Bankruptcy protection partly because of her unemployment from March 2011 through October 2011 and partly due to the spending habits of her then cohabitant girlfriend. She earned only \$10 per hour and had difficulty controlling her friend's spending. The bankruptcy listed assets of \$40,585 and liabilities of \$78,884. She surrendered a mobile home/trailer during the bankruptcy. The bankruptcy is security significant because it shows that Applicant has had financial issues for some time, but does not directly impact on Applicant's current financial condition, given that her debts covered by the bankruptcy were discharged.

AG ¶ 20(a) applies because the debts were incurred some time ago and Applicant has acted reasonably by making payments on 11 of the 13 SOR obligations. AG ¶ 20(b) applies because Applicant experienced periods of unemployment from March 2011 through October 2011 and April 2014 through January 2016. More importantly, she has kept in contact with her creditors and has made payments on the majority of her delinquent obligations. This shows that she has acted responsibly under the circumstances.

An applicant is not required to establish that she has paid each of the delinquent debts in the SOR. However, an applicant needs to show that she has a plan to resolve her debts and that she has taken significant steps to implement her plan. This she has done. Having addressed the majority of her debts by making monthly payments, I believe she will reach settlement agreements with the two creditors lacking current repayment plans and honor those agreements.

AG ¶ 20(c) does not completely apply because there is no evidence of financial counseling, but there are clear indications that her financial problems are being resolved and are under control. AG ¶ 20(d) applies because she was able to initiate and adhere to good-faith efforts to address her delinquent debts. While acknowledging that Applicant has yet to arrange for repayment of her largest delinquency (the delinquent vehicle loan

for \$14,165), that debt is not likely to be source of pressure or coercion for her while she continues to try and reach the creditor. It has been charged off and there is no indication that the creditor is currently pursuing her for payment. Her current debt obligations are being paid on time. Under all of these circumstances, Applicant has mitigated the financial consideration security concerns.

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 the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 the facts and circumstances surrounding this case. The comments under Guideline F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Applicant provided extensive evidence of payments, payment plans, or other actions to resolve the delinquent debts alleged in the SOR. She has maintained contact with her creditors. Her actions show financial responsibility. Questions about her reliability, trustworthiness, and ability to protect classified information have been mitigated. The record shows good judgment and a willingness to comply with rules and regulations. Applicant's financial considerations security concerns are mitigated.

The law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid—the majority of her delinquent obligations are being addressed—it is whether Applicant's financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me without questions or doubts about

her eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a—1.n: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge