



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



In the matter of:)
)
) ISCR Case No. 18-02290
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’ Reilley, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

10/07/2019

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

On October 9, 2018, in accordance with the Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on November 26, 2018, and requested a hearing before an administrative judge. (Answer) The case was assigned to me on March 7, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 4, 2019, scheduling the hearing for May 17, 2019. The hearing was postponed for good cause (documented medical issues) and was convened on September 5, 2019. The Government offered Exhibits (GE) 1 through 7, which were admitted, with the exception of GE 6, which the Government withdrew after objection by Applicant’s counsel. (Tr. 12) Applicant testified on her own behalf. Applicant submitted Exhibits, which were marked

as Applicant Exhibit (AE) A-W, and accepted into the record without objection. The record was held open until September 30, 2019 and Applicant submitted documentation which was marked as AE X, and accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on September 13, 2019.

Findings of Fact

Applicant, age 45, is single and has two adult children and one five-year-old child. She has no military service. Applicant graduated from high school and attended three years of college classes from 2003 to May 2007, but she has not yet obtained a degree. Applicant completed her security clearance application on August 8, 2016. She has held a security clearance since 2007. (GE 1) She has worked for her current employer for two years. (Tr. 26) Although Applicant has worked in the contracting field since about 2005, she has had various periods of unemployment during that time. (GE 1) Applicant's unemployment occurred in late 2000, 2010, 2011, 2012 and part of 2014. (GE 1, Tr. 17) She has experienced severe medical issues and surgery since 2007. (Tr. 32) She has had several hospitalizations.

The SOR alleges that Applicant filed Chapter 7 bankruptcy in February 2012, which was discharged in May 2012; has two student loans in collection; seven medical accounts in collection; a charged-off auto loan; and several consumer collection accounts for a total of \$67,521. (GE 2, 3, and 4) Applicant acknowledged the Chapter 7 bankruptcy (SOR ¶1.a) in the amount of \$69,000 and disclosed the information on her security clearance application concerning her delinquent debts. She believes that filing for Chapter 7 bankruptcy is a legitimate means of resolving debts. When she was working, she tried to make some payments on her outstanding debts, but she could not maintain the payments. Before filing for bankruptcy, she had been unemployed for one year and her monthly income (from unemployment and food stamps) was \$1,646. (GE 5)

Applicant acknowledged that she has experienced financial hardship since 2003. She prepared a statement for the DOD concerning her debts. In that 2003 statement, she noted that with regards to the majority of them, she had made some payments and payment arrangements. She had medical/hospital debts even at that time. She admitted that she was not very responsible with credit cards and let her mother use them as well. Applicant sought help from an accredited counseling/debt consolidation company and paid them about \$400. The company did not settle any accounts and wanted more money for another year of help. She decided that was not the route for her. (GE 6) She was candid about her finances due to lack of career stability, and her lack of experience concerning financial issues. She provided for her children and basic needs but had no money to pay other bills. She explained that she was a single mother for 13 years but has not received any court-ordered child support since 1996. She stated that she had been "bad" with managing money, but her hospitalization in 1997 created a sizeable debt. She referred to her new employment and wanted to pay every bill and avoid future credit mistakes. Her net monthly salary at that time was \$2,392, with no monthly remainder. (GE 6)

Applicant's 2010 credit bureau report (GE 4) reflects the Sallie Mae student loans were current and "paid as agreed" or in a deferred status. The other accounts that were delinquent were included in her 2012 bankruptcy. (GE 5)

In her Answer to the SOR, Applicant admitted that she owed the alleged debts except for one debt (SOR ¶ 1.l) and provided explanations for each allegation. Applicant had agreed to payment arrangements or settlements with all creditors. She attached her bank statement that showed the individual monthly amounts that would be taken from her bank account. Applicant provided receipts from some payments made in 2018. In addition, she noted a duplicate account in SOR ¶1.m and ¶1.n, which amounted to \$262. Two student loans (which were duplicates) in SOR ¶1.o and ¶ 1.p for \$17,189 and \$20,433 were merged into one account and later settled. She also noted two non-SOR accounts that were delinquent and now resolved.

At the hearing, Applicant explained that her current employer understands her medical issues and is supportive of her need for time off due to the continuing medical issues. (Tr. 18) The employer allows her to telework. (Tr. 31) Applicant has adjusted her spending habits. She now has only one child remaining in the home. She is now living with her aunt so that she does not have a mortgage or rent. She had previously lived with her mother. Her current employer has a tuition reimbursement program and Applicant hopes to avail herself of that program. (Tr. 26) Before this employment, Applicant earned about \$55,000. (Tr. 29) She admits that her unemployment periods were due to missing many days from work due to her various illnesses. She did not tell her previous employers why she was taking so many days off and she would be let go. (Tr. 30)

As to SOR ¶ 1.b., Applicant admitted the allegation for the car loan in the amount of \$15,417 and included with her answer a copy of the November 2018 settlement arrangement agreement. The account was to be settled in the amount of \$2,603.05, with a monthly payment of \$100. From the bank statement, it appears a \$100 payment was made in November 2018. However, at the hearing Applicant submitted a new settlement agreement with an amount of \$1,993. She also provided a debit from her bank account in that amount. (AE B) This account is settled and resolved. (Tr. 34)

SOR ¶ 1.c, is a collection account for a cable bill in the amount of \$2,099, as a result of equipment returned but not credited to Applicant. In her answer to the SOR, Applicant agreed to pay \$105.95 a month. At the hearing, she submitted a settled account summary and included a debit from her account for \$1,299.50. The letter confirms that the account is settled in full. (AE C)

As to SOR ¶ 1.d, a charged-off-account in the amount of \$983, Applicant included with her answer to the SOR a payment arrangement of \$25 a month with her bank debit statement. At the hearing, Applicant presented a letter stating that the settlement arrangement was complete and the account balance was zero. (AE D)

As to the medical accounts: SOR ¶¶ 1.e, 1.g, 1.h,1.j, 1.k, 1.m, 1.n (duplicate), 1.q, 1.r, and 1.s, for a total of approximately \$4,300, Applicant presented documentation that

the medical bills have been paid or settled in full. She has resolved the medical debts. SOR ¶1.e is a duplicate of 1.d. (AE E, G, H, J, L, N, P, R,)

SOR allegation ¶ 1.f is a collection account for \$298 (rental car) Applicant provided proof of several \$25 payments with her answer to the SOR. She submitted documentation at the hearing that the account is paid in full. (AE F)

As to SOR 1.i, an insurance collection account in the amount of \$142, Applicant made several \$25 monthly payments in 2018 and submitted a 2019 letter stating the account is satisfied. (AE I)

SOR allegation ¶1.l, a phone collection account in the amount of \$1,192, was denied. Applicant stated in her answer that it was not on her credit report. At the hearing, she provided documentation that the account has been resolved. (AE K)

The two student loan debts in SOR 1.o and 1.p are duplicates. Applicant explained the two private student loans were merged. At the hearing, she presented documentation that they were settled for an amount of \$2,500. (AE M) Applicant originally had them in her bankruptcy, but student loans cannot be discharged in bankruptcy.

SOR allegation 1.t in the amount of \$5,343 is a collection account for furniture. Applicant settled the account for \$1,500. (AE Q)

Applicant acknowledged that she was able to resolve all the SOR accounts in the last few months due to collecting income from loans that she had made to various family and friends. She did not take out a personal loan. (Tr.44) Applicant had been asking for several months for the funds that she had loaned to various people. (Tr. 86) She believes she received about \$10,000 as a result of her demand that people repay her. (Tr. 67)

Applicant received financial counseling and gained skill in saving and budgeting. (AE U) She has a good job and higher income. The employer understands her medical condition and Applicant will be able to take medical leave.

Applicant paid two non-SOR debts and presented documentation that she has resolved them. (AE V) Applicant acknowledged that she has made some mistakes.

Applicant's current annual salary is \$86,000. She submitted a financial statement. (AE A) Applicant has a net monthly remainder of about \$843. Applicant has no current delinquent debts. She works with a budget and has made several changes to her life style to cut expenses.

As post hearing submissions, Applicant submitted information concerning Federal student loans that were not alleged in the SOR. The loans were in forbearance and she has an agreement to make three payments of \$276 a month for three months, which she has completed. (AE X) After the completion of the payments, they will be submitted into a Revised Pay As You Go Pay Plan with payments of \$227 a month.

Character References

Applicant submitted 13 character references and recognitions that she has received during her career. (AE S) Each character letter attests to her good judgment and professionalism. Applicant performs at a high standard and has always followed protocol.

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 history of financial problems, including her 2012 bankruptcy, 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 debts are the result of circumstances beyond her control and medical issues. All of the above financial considerations mitigating conditions are raised, in part, by the facts in this case. Applicant's financial problems were due to chronic illness, unemployment, lack of child support, underemployment, and being the sole provider for her family. Applicant's financial problems occurred under circumstances unlikely to recur. They do not cast doubt on her judgment or reliability. She could have been more aggressive in her dealings with creditors but she could not pay all the bills. She did not live beyond her means. She moved in with relatives. Several accounts were duplicates. Her efforts were somewhat lacking. Notwithstanding, Applicant's resolution of her past financial problems and her present financial posture show diligence and responsibility in the handling of her financial obligations. She is following a solid source of financial counseling and she has a budget. She is now paying on federal student loans, which were not alleged on the SOR. On the whole, Applicant's finances are under control. She credibly promises to maintain her financial responsibility. She has always tried to obtain more education to better her employment opportunities. Her earnings should be sufficient to pay for her living expenses and current debts. I find SOR ¶¶ 1.a through 1.t. for 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 credibility and openness at the hearing, and her

many years of work service, I conclude that Applicant presented sufficient information to mitigate the security concerns raised by her financial indebtedness. Accordingly, Applicant has 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): FOR APPLICANT

Subparagraphs 1.a – 1.t:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge