



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



In the matter of:)
)
) ISCR Case No. 18-02663
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

August 27, 2019

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On December 21, 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 it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR soon thereafter, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on March 14, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 18, 2019, scheduling the hearing for April 23, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 7, which were admitted into evidence. Applicant testified on her own behalf. Applicant presented seven documents, which I marked Applicant’s Exhibits (AppXs) A through G, and admitted into evidence. The record was left open until May 23, 2019, for receipt of additional

documentation. On April 29, 2019, Applicant submitted her closing statement, but no further exhibits. DOHA received the transcript of the hearing (TR) on May 6, 2019.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a.-1.d., and 1.g.. She denied SOR allegations ¶¶ 1.e., 1.f., 1.h., and 1.i.. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor. (GX 1 at pages 6 and 12.) She is divorced from an abusive husband, and has three children, two of which live with Applicant and for whom she receives only “\$70.00 a week” in child support. (TR at page 18 line 19 to page 23 line 20.) Applicant attributes her financial difficulties to leaving her abusive husband, coupled with periods of unemployment. (*Id.*) She currently has about \$9,000 in a savings account, and about \$1,000 in a checking account. (TR at page 26 line 14 to page 27 line 5.)

Guideline F - Financial Considerations

1.a. Applicant admits that she owes about \$11,659 on a past-due credit card account. Since October of 2018, Applicant has been making monthly payments of \$250, as evidenced by a payment agreement with the creditor. (TR at page 24 lines 1~23, and AppX D.) This allegation is found for Applicant.

1.b. and 1.c. As a result of her divorce, Applicant and her former spouse had an automobile and a motor cycle repossessed. (TR at page 24 line 24 to page 26 line 13.) She has reached a settlement agreement with the creditor to pay \$3,079 towards the auto debt (1.b.), and \$4,443 towards the motor cycle debt (1.c.), with payments to be made “no later than October 11, 2019,” as evidenced by correspondence from the creditor. (AppX F.) I find Applicant is making a good-faith effort to repay these debts.

1.d. Applicant admits that she owes about \$1,256 on a past-due cell phone account. Since September of 2018, Applicant has been making monthly payments of \$125, as evidenced by receipts from the creditor. (TR at page 27 line 11 to page 28 line 3, and AppX E.) This allegation is found for Applicant.

1.e. and 1.f. Applicant denies that she owes State E about \$6,494. (see GX 5 at pages 5~6.) Her inquiries to State E have come up empty, and no such debt appears on Applicant’s November 2018, March 2019, and April 2019 credit reports (CRs). (TR at page 28 line 4 to page 29 line 12, at page 36 lines 6~9, GXs 6 and 7, and AppX A.) These allegations are found for Applicant.

1.g. Applicant admits that she owed the Department of Defense (DoD) about \$497 as the result of an overpayment by DoD. (TR at page 29 line 15 to page 30 line 2.) This alleged past-due debt was paid in September of 2018, as evidenced by a “Payment Confirmation” by DoD. (AppX C.) This allegation is found for Applicant.

1.h. and 1.i. Applicant denies that she owes the Department of Veterans Affairs about \$5,303. This debt was “paid” through the Department of Treasury, as reflected on Applicant’s April 2019 CR. (TR at page 30 line 2 to page 32 line 11, and AppX A at pages 13 and 15, See *a/so* AppX B.) These allegations are found for Applicant.

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 applies for access to classified information seeks to enter 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 (EO) 10865 provides that adverse decisions 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable 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.

Applicant had significant, admitted past-due indebtedness. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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;

(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 attributed her recent delinquencies to a divorce from an abusive spouse and to a period of unemployment. These are circumstances beyond her control. Applicant established that she has acted reasonably or responsibly with respect to her debts. Applicant has demonstrated that she addressed her admitted debts in a responsible or timely manner. Mitigation under AG ¶ 20 has been established.

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) 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 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. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated to mitigate the Financial Considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a.~1.i.: 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge