



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 19-00230
)
Applicant for Security Clearance)

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2019

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of unpaid debts and unfiled income tax returns. She did not mitigate the resulting financial security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On February 12, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. This action was taken 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* effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on March 27, 2019, and requested a hearing before an administrative judge. On July 8, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On July 10, 2019, DOHA

issued a Notice of Hearing setting the case for August 13, 2019. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. They were admitted without objection. Applicant testified, but did not offer any exhibits. The record remained open until August 30, 2019, to give Applicant an opportunity to submit evidence. She timely submitted four group exhibits that I marked as Applicant Exhibits (AE) 1 through 4. Department Counsel had no objection to these documents, and they are admitted. DOHA received the hearing transcript (Tr.) on August 30, 2019.

Findings of Fact

In her Answer, Applicant admitted all of the allegations in the SOR, except SOR ¶ 1.h, which she denied. Her admissions are incorporated into these findings.

Applicant is 53 years old and widowed. She has a 29-year-old daughter from a previous relationship. She has a bachelor's and master's degree. (Tr. 24-26) Applicant worked for federal contractors from 2005 until 2013. She was then unemployed until 2016, when she obtained a position with another federal contractor. She worked for that contractor until May 2018 when her contract ended. She is unemployed now and attending technical school to obtain certifications she needs to qualify for a federal contract with the employer for whom she recently worked and is sponsoring her for a security clearance. She did volunteer work and odd jobs during the times she was unemployed. From December 2018 until February 2019, she had a temporary position. She is receiving unemployment benefits and periodic financial assistance through friends. (Tr. 27-37, 64, 74)

Applicant held security clearances while employed with some federal contractors. She thinks she obtained her first clearance in 1991 or 1992. (Tr. 69) She has gone through the security clearance investigation process several times. (Tr. 70)

Applicant attributed her financial problems to the following factors: financial mismanagement for many years; caring for her ill mother for five years until she died in 2009; and long periods of unemployment. (Tr. 31-33)

Based on credit bureau reports (CBRs) from January 2019 and February 2018, the SOR alleged two income tax issues from 2011 and 2012, and seven debts that became delinquent between 2013 and 2017 and total \$9,877. The status of each tax issue or debt is as follows:

(1.a) Applicant has not filed Federal income tax returns for 2011 and 2012. She said she had been unable to obtain the necessary documents that were in a storage unit she lost because she was unable to pay storage fees in 2013. She said she was working on the issue with an accountant. She submitted a document from the Internal Revenue Service (IRS), dated July 19, 2018, which lists information about her wages and income for 2011. (Tr. 38-39; Answer; AE 4) This allegation is unresolved.

(1.b) Applicant has not filed state income tax returns for 2011 and 2012. She said she has been unable to obtain the necessary documents that were in a storage unit she lost because she was unable to pay storage fees in 2013. She said she was working on the issue with an accountant. She thinks she may owe her state about \$400 for 2011 and 2012. (Tr. 39-40, 43-44; Answer) This allegation is unresolved.

(1.c through 1.i) None of these alleged debts are resolved, including six that are less than \$720. (Tr. 52, 79; Answer)

Applicant testified that she filed her 2018 Federal income tax returns and was scheduled to receive a refund for that year from the IRS and state. She said she filed her 2016 and 2017 tax returns on time. She received a refund for 2017 from the IRS and state. She stated she did not file returns for 2013, 2014 and 2015 because she was not working those years and did not have enough income. (Tr. 42-46; AE 4)

Applicant owes approximately \$80,000 in student loans. She said the loans were in deferred status for the past couple years up to August 1, 2019. She said she was paying them while she was employed. She stated they are now in forbearance until November 2019. (Tr. 47-49; AE 3)

Applicant enrolled in a debt-consolidation plan in August 2016. At that time, her unpaid debts totaled \$87,868; and included \$75,646 in student loans, and the debts alleged in the SOR. She made a few monthly payments of \$330 in 2016 on the plan, and then stopped in 2017 because she was not working. She resumed in January 2018 and made payments until July 2018, when she no longer had enough money. She has not made payments since then. (Tr. 50-52; AE 2) She participated in credit counseling when enrolled in the debt-consolidation plan. (Tr. 78)

Applicant has not received a paycheck since February 2019. One month ago, she started receiving \$358 a week in unemployment, and is entitled to receive a total of \$10,000. (Tr. 72) She did not submit a written budget. She said she pays \$470 for rent, \$200 for a car loan, \$250 for car insurance, and \$80 for a cell phone each month. She also pays for gas, food, and medical insurance. (Tr. 55-61) In January 2019, a friend purchased a \$35,000 to \$40,000 car for her, of which she is responsible for about \$7,000 (\$200 a month). (Tr. 54-55, 73) This is the second time she has received unemployment benefits. (Tr. 75)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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 disqualifying conditions that could potentially raise security concerns. The following are potentially applicable 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.

Applicant has a history of inability to satisfy debts that began in 2013 and continues to the present. She failed to file Federal and state income tax returns for 2011 and 2012. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out 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's delinquent debts have been ongoing for five or more years and her unfiled tax returns for 2011 and 2012 have been delinquent for about seven years. AG ¶ 20(a) does not apply. Applicant has encountered periods of unemployment, which may have been circumstances beyond her control. However, she also admitted that she has poorly managed her finances, which was a circumstance within her control. She attempted to resolve delinquent debts beginning in 2016 through a debt-consolidation plan, but was unable to make the payments after a period of time due to the loss of her job in July 2018. She contacted the IRS and an accountant about her unfiled 2011 and 2012 Federal and state income tax returns in July 2018, but they remain unfiled. The evidence establishes some mitigation under AG ¶ 20(b).

Applicant received credit or financial counseling from a debt-consolidation company in 2016. However, there is insufficient evidence to demonstrate that her unfiled income tax returns or delinquent debts are under control. The evidence does not establish mitigation under AG ¶ 20(c). In 2016, she initiated a good-faith effort to resolve delinquent debts through monthly payments, but was unable to maintain those payments after she became unemployed. She established some mitigation as to her delinquent consumer debts under AG ¶ 20(d). Applicant's Federal and state income tax returns for 2011 and 2012 are not filed despite the fact that she has had ample time to do so. The evidence does not establish mitigation under AG ¶ 20(g).

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 intelligent and educated woman, who has worked for federal contractors and held security clearances over the years. She is familiar with the security investigative process, including its inquiry into one's financial problems, having gone through it periodically. While she candidly admitted that she has unfiled tax returns for 2011 and 2012, waiting more than six years to file income tax returns raises questions about her judgment. She also failed to demonstrate that she has taken sufficient steps to contact creditors and work out a resolution for her delinquent debts when she became unable to pay them. She has not mitigated the security concerns raised under the financial considerations guideline. The record evidence leaves me with doubt as to Applicant's reliability and suitability for a security clearance at this time.

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.i:	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