



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 19-00379
)
Applicant for Security Clearance)

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

10/15/2019

Decision

DAM, Shari, Administrative Judge:

Applicant did not sufficiently mitigate the security concerns resulting from her delinquent debts. National security eligibility for access to classified information is denied.

Statement of the Case

On February 22, 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* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on April 12, 2019, and requested a hearing before an administrative judge. On June 27, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me and issued a Notice of Hearing setting the case for August 14, 2019. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant testified

and offered Applicant Exhibits (AE) A through F into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on August 23, 2019. The record remained open until August 30, 2019, to give Applicant an opportunity to submit additional evidence. She timely provided a transmittal letter and an exhibit, which I marked as AE G and AE F and admitted into evidence without objection.

Procedural Matter

At the commencement of the hearing, Department Counsel withdrew the allegation in SOR ¶ 1.e. The amended SOR contains nine allegations.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.d, 1.f, 1.h, 1.i, and 1.j. She denied the allegations SOR ¶¶ 1.a, 1.g, and 1.h. Her admissions are incorporated into these findings.

Applicant is 42 years old and married. She and her husband have three young children. She earned a bachelor's degree in 1999 and a master's degree in 2004. In 2005, she obtained a secret security clearance while working for a defense contractor. She has worked for her current employer since August 2015. In November 2017, she submitted a security clearance application (SCA) for a top-secret security clearance. She worked from October 2005 to sometime in 2014 for the other defense contractor and was then laid off between 2014 and 2015 for six months. (Tr. 7-8, 23-25, 28-29; GE 1, GE 5)

Applicant started having financial problems in 2007, after she and her husband purchased a condominium. She stated that the housing market crisis between 2007 and 2008 negatively affected their motivation to pay the mortgage payments, as the mortgage balance was higher than the value of the property. They lived there until 2011, when they moved into her parents' home. In March 2013, the mortgagor started foreclosing on the property. In April 2014, the court entered a final foreclosure order. (Tr. 28, 30-31; GE 1, GE 6) They purchased another home in 2015. (Tr. 51)

After submitting her November 17, 2017 SCA, Applicant was interviewed by a government investigator on February 21, 2018. During the interview, Applicant discussed her delinquent debts, including her student loans, the debts subsequently alleged in the February 22, 2019 SOR. (GE 5)

Based on credit bureau reports (CBR) from August 2018 and May 2019, the SOR alleged nine debts that became delinquent between 2012 and 2017, and totaled \$39,480. (GE 4, GE 5) The status of each debt is as follows:

1. (1.a) Applicant admitted that there was a \$19,950 deficiency balance owed on her mortgage when it was foreclosed in 2013. However, she is no longer responsible for it according to a state's Department of Housing, which does not pursue mortgage deficiencies on defaulted loans. Additionally, the original

creditor is no longer in business. (Tr. 32-33; GE 6; Answer; AE A) This debt is resolved.

2. (1.b) Applicant's two student loans total over \$94,000. She took out the initial loans in 2005. During her February 2018 interview, she said she had not made significant payments on the loans, but intended to begin a payment plan in March 2018. At the time the SOR was filed in February 2019, the accounts had a past due amount of \$3,035. As of April 5, 2019, the loans were in forbearance until August 27, 2019. That deadline was extended to November 26, 2019, at which time Applicant agreed to begin monthly payments of \$260. (Tr. 33-35; Answer; GE 4, GE 5; AE B) The last time Applicant made consistent payments on her student loans was several years ago, though she said she made some monthly payments of \$25 while she was unemployed. (Tr. 54-55) This debt is not sufficiently resolved or being resolved.
3. (1.c) In February 2019, Applicant entered into a Consent Judgment with a credit card creditor. She agreed to begin making bi-monthly payments of \$50 on the delinquent \$3,461 credit card debt. She has made seven payments. Prior to this agreement, she had begun making payments of \$25 to the creditor in October 2018, but then stopped. The creditor filed a lawsuit in November 2018. (Tr. 35-37; Answer; GE 7; AE C) This debt is being resolved.
4. (1.d) This delinquent \$1,739 debt is owed to a jewelry store for a purchase Applicant made in 2015. In October 2018, Applicant negotiated a payment plan with the creditor. She began making monthly payments of \$50 in February 2019, but was unable to continue making them. She subsequently re-negotiated the debt and plans to begin monthly payments of \$59 in September 2019. (Tr. 36-38; AE D) This debt is not sufficiently resolved.
5. (1.f) In August 2019, Applicant made a \$75 payment on the \$343 medical debt, leaving a balance of \$225. She will make the final payments at the end of September 2019 (Tr. 38-40; AE F) This debt is being resolved.
6. (1.g) Applicant disclosed this \$150 medical debt in her security clearance application based on her credit report. After investigating it, she has been unable to locate a creditor to pay. She said she contacted the medical provider, who indicated that it did not have any outstanding bill for her. (Tr. 40-41) This debt is resolved.
7. (1.h) Applicant disclosed this \$200 medical debt in her security clearance application based on her credit report. After investigating it, she has been unable to locate a creditor to pay, including the medical provider. (Tr. 41-42) This debt is resolved.
8. (1.i) The \$840 debt owed to a local government is for unpaid parking tickets. Applicant tried to establish a repayment plan with the agency, but it does not

do that. She intends to pay it after she completes payments on some of her established payment plans. (Tr. 42-43) This debt is unresolved.

9. (1.j) The \$8,489 judgment owed to a condominium association was entered against Applicant in 2016, after the property foreclosure was completed. In November 2018, she began contacting the creditor for a payment plan and subsequently initiated one for resolving the judgment. She documented seven payments from June 2017 to July 2018, in the amounts of \$106 and \$282, and then apparently stopped making them. (GE 2) In March 2019, she entered into another agreement to settle the judgment (now \$9,624) through monthly payments of \$535, beginning in April 2019. She presented evidence that she made the full payments in April, May, and June 2019; she made partial payments of \$267 in July and August 2019. (Tr. 43-47) This debt is not sufficiently resolved.

Post-hearing, Applicant submitted a written family budget. She acknowledged that she and her husband had not been working with one on a monthly basis. She stated that they recently took a financial workshop at their church. (Tr. 61-62)

According to her budget, Applicant and her husband have a net monthly income of approximately \$8,320. After paying monthly expenses, they have about \$2,000 remaining each month, which should be sufficient for Applicant to make her \$260 student loan payment in November, as it is not included in the submitted budget that covers September through December 2019. Applicant and her husband earn about \$145,000 annually, and have done so for the past couple years. (AE H) Applicant's husband also has outstanding student loans, though she does not know the amount or payment status. (Tr. 54)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the 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. Two 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 has a history of inability and unwillingness to satisfy debts that began in 2007 and continues into the present. According to her budget, she has about \$2,000 remaining in her budget at the end of each month, which could be used to resolve delinquent debts. 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 four 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts have been ongoing for more than 10 years. The evidence does not establish mitigation under AG ¶ 20(a). Some of Applicant's financial difficulties may be attributable to the real estate crisis that affected her ability to pay a mortgage after she purchased her first house in 2007. That was a circumstance beyond her control. However, she did not present sufficient evidence to prove that the loss of equity impacted her ability to make agreed payments, or that she responsibly managed her delinquent debts under the circumstances. The evidence does not establish mitigation under AG ¶ 20(b).

Applicant recently participated in a financial workshop through her church. While there is evidence that she resolved five of the nine alleged delinquent debts, there is insufficient evidence to conclude that the other four delinquent debts are under control.

The evidence does not establish full mitigation under AG ¶ 20(c). Applicant has not provided sufficient evidence of having initiated good-faith efforts to resolve the larger debts alleged in SOR ¶¶ 1.b, 1.d, 1.i, and 1.j. She did not begin to seriously address these debts until after she started the security process and received the SOR. Only recently has she established a budget to manage her finances, including delinquent debts. AG ¶ 20(d) does not apply.

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 42-year-old woman. She has held a security clearance for over ten years, during which time she began to accumulate debts, some of which she has not adequately addressed or sufficiently resolved. Although she testified candidly about her delinquent debts, it was clear that she did not have a firm grasp on her debts or budget, and has not established a solid and significant track record of responsible financial management. The Appeal Board has addressed a key element of the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge

can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

After listening to Applicant's testimony, observing her demeanor, and reviewing her new budget, I believe that she is now more committed to responsibly managing her financial obligations. However, the record evidence leaves me with concerns as to Applicant's judgment and suitability for a security clearance at this time. Applicant did not mitigate the security concerns arising under the financial considerations guideline.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Withdrawn
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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