



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00493
)
Applicant for Security Clearance)

Appearances

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

07/24/2019

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 1, 2018. On March 13, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on April 2, 2019. She elected to have her case decided on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On April 25, 2019, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on May 22, 2019. She was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted an undated response that was received at DOHA on or about May 24, 2019. It is marked as Item 7 and admitted without objection.

The case was assigned to me on June 14, 2019. The SOR and the answer (Items 1 and 2) are the pleadings in the case. The Government's Items 3 through 6, provided with the FORM, are admitted into evidence without objection.

Findings of Fact

Applicant admitted all the allegations, SOR ¶¶ 1.a – 1.h. She provided a narrative explanation in her SOR Response, and another narrative explanation in her FORM Response. She provided no documents. I have incorporated her admissions and explanations into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 35 years old. She and her husband have been married since July 2016. They have a two-year-old son. Applicant was married to her first husband from March 2006 to June 2015. She has three children from her first marriage, ages 15, 13, and 9. (Item 3, Item 7)

Applicant graduated from high school in 2002. She became a certified medical assistant in 2006, and has been employed in the health care industry ever since, with some breaks in employment while raising her children. She was unemployed from June 2008 to January 2010, and also from September 2016 to April 2017. In April 2017, she began a job as a medical assistant, and submitted her SCA in January 2018. (Item 3) It is unclear if she remains in that position, since the SOR was sent to Applicant through a subsequent employer, as reflected on her SOR receipt.

Applicant has never served in the military, but it is likely that she either is or was a military spouse, since her SCA references living on a military base between 2007 and 2009, and later moving due to "PCS" (permanent change of station). (Item 3) It is not clear from the record how her husband is employed.

The SOR concerns eight delinquent debts, totaling about \$28,589. Applicant admitted all of the debts in her SOR Response. (Items 1, 2) They are also established by credit reports in the record, from February 2018 and October 2018. (Items 5, 6) An April 2019 credit report shows a single credit card account in good standing, and no delinquent debts. (Item 4)

SOR ¶ 1.a is an auto loan that has been charged off in the amount of \$13,375. SOR ¶¶ 1.b (\$6,036) and 1.d (\$3,504) are student loans that have been placed for collection. SOR ¶ 1.c is an account for past-due rent that has been placed for collection in the amount of \$3,079. SOR ¶ 1.e is a past-due medical account, placed for collection in the amount of \$135. SOR ¶¶ 1.f (\$988) and 1.g (\$621) are past-due accounts to phone companies. SOR ¶ 1.h (\$140) is a past-due account to a fitness club.

Applicant did not declare any delinquent debts or past-due financial accounts on her SCA. In her answer to the SOR, she explains that she first incurred debts during the breakup of her first marriage. Other debts followed after the marriage ended and she lived on her own. Applicant explains that she put her children's needs first, prioritizing them over paying her debts. She needs a well-paying job to help her begin to address her debts, and notes that she has not incurred new debt. (Item 2)

In her FORM Response, Applicant explains further that she hopes to have her debts paid off in five years. She notes that she has not provided proof that she has arranged payment plans with her creditors because she does not want to enter into a payment plan that she cannot afford. She is considering debt-management counseling. She gets advice from her husband on how to manage her finances better. (Item 7)

Applicant explains that her plan is to make a list of all of her debts, and then pay them off, one by one, paying the smallest debt first, working her way to the larger debts. She wants to continue her medical education in the future and thereby earn more income. Her youngest son is in daycare, costing \$210 a week. Once her son is in elementary school, her finances will improve. (Item 7)

Applicant provided no information about any steps she has taken to attempt to settle, pay, or otherwise resolve, any of the debts in the SOR. She provided no documentation of the current status of any debt alleged. She also provided no details or documents about her current financial situation, such as her household's assets, monthly income, or expenses.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The adjudicative 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 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

Analysis

Guideline F, Financial Considerations

The financial considerations security concern 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns: ¶¶ 19(a) “inability to satisfy debts” and (c) “a history of not meeting financial obligations” are applicable, given the record evidence of Applicant's delinquent debts.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not provided sufficient evidence to fully apply any of these mitigating conditions. She explained that her SOR debts were incurred either as her first marriage was ending, or in the period after that. She has found it difficult to make ends meet, and has prioritized her children's needs over repaying her creditors.

While this is understandable, this alone is not enough to conclude that her debts occurred due to circumstances beyond her control. Moreover, even if so, Applicant did not establish that she undertook reasonable efforts under the circumstances to resolve her debts. AG ¶ 20(b) therefore does not fully apply. Similarly, she did not establish sufficient good-faith efforts to pay or otherwise resolve her debts, as required under AG ¶ 20(d).

Applicant has yet to set out a reasonable plan for repaying her debts. She has not made any concrete steps towards implementing a repayment plan, such as by establishing a track record of steady payments towards her debts as best she can. She provided no documents about the current status of her debts, all of which are ongoing and unresolved.

It is true that a recent credit report shows no delinquent debt. However, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. ISCR Case No. 14-03612 at 4 (App. Bd. Aug. 25, 2015). Applicant also acknowledged responsibility for all of the debts in the SOR, and did not establish that any of them have been resolved. Applicant provided insufficient evidence to apply any of the Guideline F mitigating conditions.

Whole-Person Concept

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. In applying the whole-

