



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



In the matter of:)
)
) ISCR Case No. 19-00808
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2019

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On March 29, 2019, 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 Guidelines F and E. 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 on June 7, 2019, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 27, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 11, 2019, scheduling the hearing for October 24, 2019. The hearing was postponed for good cause and rescheduled for November 21, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted. Applicant testified on her own behalf. She submitted two documents at the

hearing, Applicant Exhibits (AE) A and B, which I marked, and accepted into the record without objection. At Applicant's request, I kept the record open until December 12, 2019. Applicant submitted five documents, which I marked as AE C-G, and accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on November 12, 2019.

Procedural Issue

The Government moved to amend the SOR at the hearing based on Applicant's testimony that she owed unpaid Federal taxes for years 2011 through 2018. Applicant was given an opportunity to respond to the amendment. She did not object to the amendment. The Government also issued a written request for clarification of amendment on October 5, 2019, to conform to the oral motion. Thus the Government's motion is granted.

Paragraph 1 of the SOR is amended by adding subparagraph 1.i: "You are indebted to the Federal Government for at least \$12,000, for tax years 2011 through 2018."

Findings of Fact

Applicant, age 51, is married and has two adult children. She obtained her high school diploma in 1985. Applicant completed her security clearance application on August 21, 2017. She has held a security clearance since 1988. (GE 1) She is employed as an office manager for her current employer. She has maintained consistent employment since 2001 and has not been unemployed in the past.

The SOR alleges that Applicant has delinquent debt in the approximate amount of \$51,000. The debts include consumer loans and collection accounts. Applicant admitted the majority of the allegations, but she denied some because she believed the accounts were resolved or are in dispute. Applicant noted that she used poor judgment and set the bills aside and did not pay them. (Tr. 17) She denied the allegation under AG ¶ 2.a. under personal conduct concerns. She provided explanations for each allegation. The amendment concerns the Federal tax issue that Applicant volunteered at the hearing.

Applicant acknowledged her financial hardship over the past seven years from 2011-2018. She noted that she experienced many major life "experiences." She stated that in her personal life, she helped her family and put her own financial obligations to the side. She noted that she has been working since 1988 and all was well until the past few years. (Post-hearing letter, AE F)

During Applicant's investigative August 2018 interview, she stated that she has been focused and is paying off debts on her credit report and trying to get some items removed from her credit report. She recently started working with a credit consumer agency to dispute some debts. She wants to be back on track. She loves her job and wishes to continue. She takes responsibility and is attempting to correct the issues.

However, she also noted that she knew she had defaulted on a loan but agreed to follow up within five days of the interview to discuss all the accounts. (GE 3)

Applicant claimed that she paid some of the accounts, but has not received anything from the company to prove her assertion. As to SOR 1.a, Applicant submitted a letter of agreement, dated September 24, 2019, showing that she is paying \$300 a month on a loan that was delinquent in the amount of \$15,538. The quoted balance is \$14,338.07. (AE A)

As to SOR 1.b, Applicant stated that this charged-off account in the amount of \$4,430 is an ongoing situation between her son and an insurance company. It was her car and her son had an accident. She knows that something is owed, but she has not addressed the issue. She did not elaborate and did not submit any documentation. (Tr. 35)

As to SOR 1.c, a charged-off account in the amount of \$2,267, Applicant admitted that she is now in a payment arrangement. She has made monthly payments of \$50 since June 2019. She had not made any payments before that time. The remaining balance on the account is \$2,017.02. (AE D)

As to SOR 1.d, a collection credit account in the amount of \$836, Applicant thought that \$200 a month was being made, but it was not. She presented a receipt, dated October 31, 2019, for the full amount, which showed the account is paid in full. (AE E)

As to SOR 1.e, a collection account in the amount of \$153, Applicant denied the debt because she called the company and they had no record of the account. (Tr. 41)

As to SOR 1.f, a 2017 medical account in collection for the amount of \$52, Applicant is disputing this account. She stated that she has paid all her medical accounts and has not been able to resolve the issue with the doctor's office or the insurance company. She does not intend to pay until she understands why the insurance company will not pay. (Tr. 46)

As to SOR 1.g, another medical account in the amount of \$497, she has no idea what the account is for and she will take care of it when she is able. (Tr. 48)

SOR 1.h a collection account in the amount of \$2,063 for a timeshare that she purchased in 2011, she is aware of the debt, but she has not been able to address the maintenance fees and taxes. She wants to sell it. (Tr. 49)

As to SOR 1.i, Applicant admitted that she owed Federal income tax for the years 2011 through 2018. (Tr. 69) She approximated that she owed about \$12,000. (Tr. 70) She was not really certain about which years she may not have filed. (Tr. 89)

Applicant's post-hearing submissions included documents that reflected she obtained the services of a tax preparer, with information provided for the years 2011-

2018, with the exception of 2017. (AE G) She submitted documents that on November 14, 2019, she had the tax returns prepared for tax years in question. She presented no documentation to show that a payment arrangement with the IRS is in place.

Applicant's salary is about \$80,000. She has a car note and a pension account. Her husband works and contributes to the household bills. She does not have a budget. She has taken a few vacations in the past years.

When Applicant completed her 2017 SCA, she answered "No" to Section 26 concerning judgments or liens in the past seven years. He also answered "No" to Section 26 concerning bills or debts turned over for collection accounts.

Applicant denied that she intentionally falsified her 2017 SCA. In her answer, and in her testimony at the hearing, she claimed she had not thought of the accounts or was not really aware of them. She answered "No" and stated that she kept no information from the investigator during her interview.

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 admissions, corroborated by her credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations") and AG ¶ 19 (f) (failure to pay annual Federal, state, or local income tax as required.)

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 long-standing and she acknowledges that she had poor judgment and did not address the delinquent accounts. After the issuance of the SOR, Applicant began to contact some of the creditors and or dispute the accounts. Admittedly, she had made a few small payments before the SOR, but the payments were not consistent. She has been gainfully employed. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved except for a few initial payments recently. She promises to address the accounts and to continue to pay them in the future.

AG ¶ 20(b) is not established. Applicant did not present any credible explanation for the delinquent debts or that circumstances beyond her control caused the delinquent debts, nor that she acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling nor are there clear indications that her financial situation is under control. Only recently did she begin to address the debts when she realized that her security clearance and employment were in jeopardy. As to the failure to pay Federal income taxes from 2011 to 2018, Applicant provided no credible explanation. She has not yet established a payment plan with the IRS. Her financial problems are not under control. Any doubts must be resolved in favor of the Government.

Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.i against Applicant.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of her SCA, the following disqualifying condition could apply:

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that she falsified her 2017 SCA, in her answer, and in her remarks at the hearing, she was adamant that she is a good person and has worked more than 20 years with her current employer. She told the investigator that she was not aware of some of the accounts. An omission, standing alone, does not prove a falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.¹ An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on an SCA was deliberate.²

In this instance, it is clear from Applicant's comments that she was not aware of some of her delinquent debts. She should have disclosed the delinquent debts she had knowledge of on her SCA. However, I find insufficient evidence of an intent by Applicant to intentionally omit, conceal, or falsify facts from and on his SCA. Therefore, AG ¶ 16(a) is not established.

¹ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

² ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant made prompt or good-faith efforts to correct her falsification or concealment. She spoke openly to the investigator during his interview. Applicant was credible and has shown that similar lapses in judgment are unlikely to recur. She provided sufficient information in this record to demonstrate that she has met her burden of proof for her personal conduct.

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 Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including her credibility and openness at the hearing, I conclude that Applicant did not deliberately falsify her SCA, but she has not mitigated the security concerns raised by her financial indebtedness and delinquent taxes for the years in question. Accordingly, Applicant has not 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): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.i: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **FOR APPLICANT**

Subparagraphs 2.a: **For Applicant**

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge