



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00844
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On April 2, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 22, 2019, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on June, 20, 2019. The Government's evidence is identified as Items 1 through 5. Applicant was

afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 5 are admitted into evidence. The case was assigned to me on August 7, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. She is a high school graduate. She married in 1996 and divorced in 2000. She has a 22-year-old child from the marriage. In 2002, she began a civil union and has two children from the union. They are 16 and 9 years old. Applicant was employed from September 2009 to July 2018. She left that job and has been employed by a federal contractor since July 2018. (Item 2)

Applicant completed a security clearance application (SCA) in August 2018. In it she disclosed she had numerous delinquent debts that had been turned over to collection agencies. She stated:

I had over extended myself in credit card debt. I had been struggling to pay at least the minimum credit card payments up until 2017. In 2017 my husband didn't receive any income for approx[imately] 3-4 months and at the time I became so behind on the credit cards bills, other bills, and the minimum payments became so large that I was unable to pay. (Item 2)

She further stated that she had been working with the collection agencies to pay off the debts and was making monthly payments on many of the delinquent debts. (Item 2)

Applicant was interviewed by a government investigator in November 2018. She confirmed her delinquent debts and reiterated she was making monthly payments on many of them. She explained that the reason for her delinquent debt was because she was overextending herself by shopping at retail stores and her husband's unemployment at the time. She believed her financial situation was improving with her new job. She stated that she will no longer use credit cards. She did not participate in financial counseling. She did not provide supporting documents to corroborate that she is making monthly payments on her delinquent debts. She did not provide information about her current financial situation or a budget. (Item 3)

Credit reports from October 2017 and May 2019 corroborate the delinquent debts. A review of the May 2019 credit report shows that the collection account alleged in SOR ¶ 1.c (\$1,968) has a reduced balance of \$1,480 that is past due. The credit report states that there is a partial payment agreement in place and the last payment made was \$70 in April 2019. (Items 4, 5)

Applicant stated in her SCA that she had made a payment arrangement for the debt in SOR ¶ 1.a (\$4,125). She was to make monthly payments of \$125. Her 2017 and 2019 credit reports do not reflect any payments being made and the debt remains in collection. (Items 2, 4, 5)

Applicant stated in her SCA that she negotiated a payment plan of \$150 a month for the debt in SOR ¶ 1.b (\$4,677). Her 2019 credit report shows a reduced balance, but the debt is still past due. It shows she last made a payment in March 2019. It appears she is paying the debt, but she failed to provide additional documents to show more recent payments. (Items 2, 4, 5)

There is no evidence that the collection account in SOR ¶ 1.d (\$1,660) is being paid. There is no evidence that the delinquent debt in SOR ¶ 1.e (\$1,007) is being paid. (Items 4, 5)

The 2019 credit bureau report shows that the charged-off account in SOR ¶ 1.f (\$500) was paid in approximately February 2019. (Item 5)

The collection account in SOR ¶ 1.g (\$4,538) shows a reduced balance in the May 2019 credit report (\$3,804). It also indicated the last payment made was in March 2019. It appears Applicant is paying this debt, but she failed to provide additional documents to show more recent payments. (Items 2, 4, 5)

The collection account in SOR ¶ 1.h (\$1,822) shows a reduced balance in the May 2019 credit report (\$1,114). It indicated the last payment made was in March 2019. The collection account in SOR ¶ 1.i (\$1,707) shows a reduced balance in the May 2019 credit report (\$1,407) and it indicated the last payment made was in March 2019. The collection account in SOR ¶ 1.j (\$1,050) shows a reduced balance in the May 2019 credit report (\$633) and the last payment was in March 2019. The collection account in SOR ¶ 1.k (\$721) reflects a zero balance in the May 2019 credit report and indicated the last payment was in March 2019.

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had approximately \$23,775 of delinquent debts, alleged in SOR ¶¶ 1.a through 1.k. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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;
- (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 stated in her SCA that she was making monthly payments on some of her delinquent debts. She did not provide documents to corroborate she has payment agreements with her creditors, except a partial agreement with one creditor, or proof of consistent payments she may have made, or that any of the debts are resolved. It appears from her May 2019 credit report that the balances on some of her debts have been reduced, and it also shows a last payment of March 2019 on some debts. There are also collection accounts that are alleged in the SOR that show the debts remain unpaid.

Applicant's debts remain recent. She did not provide evidence that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant stated in her SCA that she overextended her use of credit cards and her husband was unemployed for several months. Her husband's unemployment was beyond her control. Her use of her credit cards was within her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant did not provide sufficient evidence to show she has acted responsibly under the circumstances. I have considered the information on Applicant's credit reports, but without additional information, such as when Applicant began making payments towards her delinquent debts; whether she has payment agreements with creditors; whether her payments are consistent; and her overall financial situation, I am unable to determine if she acted responsibly. AG ¶ 20(b) has only partial application.

There is no evidence that Applicant has received financial counseling. She has delinquent debts that she has not addressed. She did not provide information about her current finances or budget. There is some evidence that Applicant has made payments on some of her delinquent accounts. She did not provide amplifying information on when she began making payments; whether the payments were consistent; or whether she has payment or settlement arrangements with any of the creditors. Although she is credited with reducing the balances for some of the alleged debts in the SOR, there are other delinquent debts that have not been addressed. I am unable to conclude at this time that there are clear indications that her financial problems are being resolved and are under control. AG ¶ 20(c) does not apply. The evidence supports partial application of AG ¶ 20(d) regarding the debts that show a reduced balance, but I am unable to conclude that she is adhering to a plan because she failed to provide evidence regarding such.

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 the 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 the 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 42 years old. I have considered that according to Applicant's May 2019 credit report some of the delinquent debts alleged in the SOR show a reduced balance and that a payment was made in March 2019. Other debts remain unpaid. Applicant did not provide corroborating documentary evidence to show her current financial state; whether she made consistent payments to creditors; or that she has payment agreements with creditors. Although it appears she is reducing her debt, at this time she has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge