



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 19-01155 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: Applicant's Spouse, Personal Representative

11/15/2019

Decision

Gregg A. Cervi, Administrative Judge:

This case involves national security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The personal conduct concern was unfounded, but Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 12, 2018, seeking eligibility for a Department of Defense (DOD) security clearance. On May 3, 2019, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant answered the SOR on May 20, 2019, and requested a hearing before an administrative judge. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The Adjudicative Guidelines (AG) were revised effective June 8, 2017, and apply herein.

The case was assigned to me on July 8, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 19, 2019, scheduling the hearing for September 9, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant and a character witness testified on her behalf. The record was held open for Applicant to submit additional information. She submitted Applicant Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on September 18, 2019.

Findings of Fact

Applicant is a 59-year-old building security officer for a defense contractor, most recently employed since April 2018. She listed a five-month period of unemployment in 2015, and noted an inconsistent employment history from 1996 to 2001. She graduated high school in 1979, and is currently taking classes toward an associate's degree. She married in 1990, and has no children. She does not currently hold a security clearance.

The SOR alleges under Guideline F, a Chapter 7 bankruptcy filed in 2000 and discharged in 2001; a Chapter 13 Bankruptcy filed in 2007 and discharged in 2014; a Chapter 13 bankruptcy filed in 2016, converted to a Chapter 7 bankruptcy, and discharged in August 2016; and a vehicle loan collection account totaling \$22,000. In addition, the SOR alleges under Guideline E, that Applicant falsified her 2018 SCA by failing to disclose the collection account listed in the SOR. Applicant admitted all of the bankruptcy allegations, and denied the auto loan collection and falsification allegations.

Applicant and her spouse have inconsistent work histories, partially due to her spouse's disabilities, and Applicant expended time and money to assist her elderly mother. Applicant's spouse was injured while serving on active duty and in a civilian job, and receives disability benefits from the Department of Veterans Affairs and Social Security. He testified that he worked 27 jobs in 25 years because of a back injury and post-traumatic stress disorder (PTSD). They jointly filed Chapter 7 bankruptcy petitions in 1997 and 1998. Both were dismissed.

In 2000, Applicant's spouse was injured on the job and unable to work. Since they were both working in temporary jobs at the time, they were unable to generate sufficient household income to meet their expenses. They filed a joint Chapter 7 bankruptcy petition in 2000 that was discharged in 2001. Applicant stated that they were able to discharge about \$20,000 in consumer debt. In 2001 they started a business supplying gift shops. The business closed in 2006.

In 2007, Applicant and her spouse filed a joint Chapter 13 bankruptcy petition. Applicant paid \$4,348 to creditors under the plan, and \$141,866 of unsecured claims were discharged without payment. The bankruptcy was discharged in 2014. The bankruptcy filing was preceded by Applicant's spouse receiving an \$81,000 settlement for a workplace injury in 2006. Applicant also had a home foreclosed in 2006 because they were unable to refinance. The mortgage deficiency balance was forgiven after the 2007 bankruptcy was filed.

Two years after the last bankruptcy discharge, Applicant and her spouse again filed a joint Chapter 13 bankruptcy petition in March 2016. They converted the petition to a Chapter 7 bankruptcy in May 2016. Applicant abandoned \$80,410 in assets and discharged \$241,832 in debts. The bankruptcy was discharged in August 2016. Applicant claims the majority of debts were joint accounts initiated by her spouse, who purchased three vehicles for a ride-share business, but the business quickly failed. He also had about \$100,000 in student loans that were forgiven due to his disability.

Applicant took out an auto loan that became delinquent in 2016 for \$38,183, and placed in collection. She stated that she began paying the agreed \$530 per month in October 2016, but fell behind by making partial, irregular payments beginning in April 2017. In May 2019, she made a \$7,221 payment to bring the account current, and resumed the \$530 monthly payments from June to September 2019. She stated that she was laid off from work when she was unable to make all required payments, however, the partial, irregular payments lasted from July 2017 until May 2019. As of September 2019, Applicant owed a balance of \$19,091 on the account. Of note, Applicant reported that she worked two full-time jobs at that time; from September 2015 to January 2018 as a cashier for a government contractor, and a second job from September 2015 to September 2016 as a receiving clerk for a retail store.

Applicant provided a basic budget purporting to show that she and her spouse live within their means using her spouse's disability income alone. Applicant testified that she currently earns about \$48,000 per year, and her spouse receives about \$50,000 per year in disability income. Applicant has about \$1,000 in savings, and is paying on a \$28,000 student loan. She also has joint certificates of deposit valued at about \$28,346.

In July 2019, Applicant and her spouse took a vacation and entered into a timeshare agreement. Despite a plan to vacation in Hawaii and Israel, they later discovered that the timeshare agreement had a negative effect on their credit and unexpected charges were placed on their credit card. They drafted a letter to the timeshare company asking to be relieved of the obligation because they may not be able to purchase a home with poor credit scores. The letter is an undated and unsigned copy, so I do not know when or if it was delivered and the current status of account. I note the timeshare does not appear as a line item on Applicant's budget. Applicant utilized court-mandated credit counseling before each bankruptcy filing.

When Applicant completed her SCA in June 2018, she was making partial payments on the auto loan collection account, however, she did not disclose the delinquency or collection account as required. Applicant explained that since she was in a repayment plan with the collection agent, and making payments, albeit partial and irregular, that she did not consider the account to be delinquent. She stated that she did not intentionally fail to list the debt, but misunderstood the status of the debt when she completed the SCA. Applicant disclosed her 2016 Chapter 7 bankruptcy in her SCA.

Law and Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See, e.g.*, ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See, e.g.*, ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

Analysis

Guideline F: Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant incurred multiple delinquent debts over a significant period resulting in two bankruptcy filings that were dismissed in 1997 and 1998, and three discharged bankruptcies in 2001, 2014, and 2016. In addition, Applicant has been making irregular and inconsistent payments on a significant collection account since 2016. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 attributed her financial problems to her and her spouse's inconsistent employment history, her spouse's disabilities, failed business endeavors, and caring for her elderly mother. I note that Applicant and her spouse have no children, and they both have a history of working, although they changed jobs regularly, a factor largely outside of their control. Applicant defaulted on her 2016 car loan the same year it was incurred, and despite working two jobs and agreeing to a repayment plan offered by the collection agent, she has been unable to consistently make the required payments until recently when she brought the payments up to date. The record is replete with Applicant's continued use of the bankruptcy courts to reduce or extinguish her debts. Although use of the bankruptcy process is a recognized method of debt resolution, it must be followed with a reasonable track record of responsible financial decisions. That track record is absent in this case.

I am unable to find that Applicant acted responsibly under the circumstances or that she made good-faith efforts to resolve delinquent debts or negotiate good-faith solutions to her financial problems when they arose. AG ¶ 20(b) and (c) are partially applicable, but they are not conclusive. Although Applicant's financial situation may moderate now that her spouse has a substantial disability income, I am not convinced, based on her track record so far, that future delinquencies will not recur and that Applicant has the intent, means, and ability to resolve debts when they do occur. None of the other mitigating conditions fully apply to show that Applicant has a handle on her financial status and can responsibly resolve debts in the future. Applicant's financial history continues to cast doubt on her current reliability, trustworthiness, and good judgment.

Guideline E: Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

When falsification allegations are controverted, as in this case, the Government has the burden of proving the allegations. An omission, standing alone, does not prove 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. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant did not report her collection account on her SCA, but she did disclose her 2016 Chapter 7 bankruptcy. Applicant denied intentionally falsifying her SCA, and attributed the omission to a misunderstanding of the status of the collection account, since she was making somewhat regular, albeit reduced payments under a repayment plan. I find that based on Applicant's answer and testimony, her failure to report the delinquency and collection status on her SCA was not intentional. She provided a plausible explanation for her omissions, and intentional falsification is not supported by the evidence. AG ¶ 16(a) is not applicable to SOR ¶ 2.a. The personal conduct security concern is concluded for Applicant.

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(a). 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 Guidelines F and E in my whole-person analysis.

I considered Applicant's answer, her testimony, testimony of her witness, and the documentary evidence. Applicant faced financial hardships, however she has not shown financial responsibility with regard to the accumulation or resolution of debts. Her history of bankruptcies raises concerns for her financial track record, and based on the record presented, there is insufficient evidence to show that she has the resources or ability to resolve future debts without resorting to extraordinary means when repayment is no longer feasible. I am not convinced that she knowingly failed to submit truthful answers on her SCA.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations. The personal conduct security concerns were not established.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.d: | Against Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Gregg A. Cervi
Administrative Judge