



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



In the matter of:)
)
) ADP Case No. 18-03002
)
)
Applicant for National Security Eligibility)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/04/2020

Decision

WHITE, David M., Administrative Judge:

Applicant has extensive student loan debt that was in temporary forbearance during 2019. She cannot afford to repay many other delinquent medical, income tax, and consumer credit debts, and defaulted on her most recent bankruptcy plan after her Victim Advocate position was eliminated in 2016. Resulting trustworthiness concerns were not mitigated. Based upon evaluation of the testimony, pleadings, and exhibits, national security eligibility to occupy a designated sensitive position is denied.

History of Case

On November 15, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 15, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging trustworthiness 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017, as promulgated in Appendix A of SEAD 4.

Applicant answered the SOR in writing on April 1, 2019 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 6, 2019. DOHA issued a Notice of Hearing on August 15, 2019, setting the hearing for September 10, 2019. On that date, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified, and offered Exhibits (AE) A through D into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until October 3, 2019, to permit submission of additional evidence, objections, and comments. DOHA received the hearing transcript (Tr.) on September 18, 2019. Applicant submitted several additional comments, which were admitted into evidence as AE E, and the record closed as scheduled.

Findings of Fact

Applicant is 67 years old, and had three children during two marriages that ended in divorce. Neither former husband paid her any child support. She earned an associate's degree in 1994, a bachelor's degree in 1996, and a master's degree in 2007. She applied for a trustworthiness determination in connection with starting her contract work in December 2017 as a counselor at a Navy Fleet and Family Services Center. She has never served in the military or worked in the Federal civil service. (GE 1; Tr. 15-17, 40-42.)

From October 1999 to May 2016, Applicant worked as a domestic violence legal victim advocate in the Human Resource Department of a Native American Tribe. She was then laid off, through no fault of her own, when her position was eliminated due to lack of work. When she was laid off she was earning about \$92,000 per year. (GE 1; GE 6; Tr. 39, 48-49.)

In December 1995, Applicant purchased a home for about \$200,000 with funds that she inherited from her parents' estate. In 2000 and 2005, respectively, she mortgaged and refinanced this property to withdraw equity funds. In 2009, during the financial collapse and mortgage financing turmoil, she lost the home through foreclosure. She spent about \$40,000 on legal fees in her unsuccessful attempt to retain ownership of her home. (GE 1; GE 6; Tr. 42-43, 53.)

Applicant's bankruptcy court record indicates that she and her second husband filed bankruptcy proceedings in September 1985 that were closed in September 1988. She then filed bankruptcy proceedings herself in October 1988 and April 2002, which were closed in February 1989 and February 2005, respectively. These actions were not alleged as security concerns in the SOR, and no further detail concerning the proceedings was made a matter of record. (GE 2; Tr. 26, 28.)

Applicant most recently filed for Chapter 13 bankruptcy protection in April 2014, seeking to resolve \$117,349 in unsecured nonpriority claims, and \$59,246 in U.S. Internal Revenue Service (IRS) claims. She was in compliance with her five-year bankruptcy plan until June 2016, after she was laid off from the \$92,000-per-year victim advocacy position

she had held for more than 15 years. This bankruptcy was finally dismissed and closed in March 2017 when she could not afford to continue making plan payments despite applying for unemployment compensation and early Social Security benefits. (Answer; GE 1; GE 2; Tr. 28, 39-40.)

The IRS filed a \$19,533 federal tax lien against Applicant in March 2014, shortly before her latest bankruptcy filing. She attributed her tax debt to having insufficient funds withheld during several years when she worked two jobs at the same time, but did not provide further details. She said that she had been in telephonic contact with the IRS, but was unsuccessful in reaching an agreement that could resolve her tax delinquencies. (Answer; GE 1; GE 3; GE 6; Tr. 52-54.)

The SOR alleged that five of Applicant's student loan accounts, totaling \$26,710, had been placed for collection. In her March 2019 Answer, Applicant denied these allegations and said the accounts were then in a good-standing repayment status with a different loan servicing agency. She provided documentation at the hearing which confirmed that statement; and further documentation that on August 21, 2019, the agency granted her request for forbearance of payments toward her outstanding \$24,952 principal balance until December 28, 2019. Although no payments toward these loans were documented, she provided a statement showing that she had fully repaid five student loans she opened from 1995 to 1997, which totaled \$18,772. (Answer; GE 1; GE 3; GE 6; AE A; AE B; AE C; Tr. 38, 48, 52.)

As alleged in the SOR, and admitted by Applicant, she has at least 15 delinquent medical debts, ranging from \$59 to \$226 and totaling \$2,046. She denied owing four other SOR-alleged medical debts totaling \$555 that had been placed for collection; claiming they were probably duplicates of her admitted delinquent medical bills although none of the amounts due were the same. These medical debts appear to be relatively small ancillary or co-pay charges, many of which resulted from her recent operation to address a heart-related condition. Applicant also has eight consumer credit accounts that were placed for collection or charged off, totaling \$6,715. She provided no evidence indicating progress toward resolving any of these accounts, or the means to do so.

Applicant declined to provide a financial statement with details concerning her income, living expenses, and plans for debt repayment. She said her financial troubles were ongoing, despite her frugal lifestyle while commuting a long distance every day with an old vehicle to work at her job that pays \$18.72 per hour. (TR. 49-54.)

Applicant is a person of excellent character. Her testimony was honest and straightforward. Her pastor testified at length about her outstanding integrity, caring nature, and dedication to caring for others. She is an important officer in her church, and has overcome numerous setbacks and hardships through two difficult marriages and several employment setbacks. She has received numerous academic and community awards, honors, and other forms of recognition for her achievements. (AE D; Tr. 41-43, 45-48.)

Policies

When evaluating an applicant's national security eligibility, 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 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. 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. Pursuant to Directive ¶ E3.1.15, 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 applying for national security eligibility seeks to enter 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 sensitive or classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of information compromise. Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny 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* 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, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations and
- (f) failure to file or fraudulently annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a lengthy history of financial difficulties that arose before she obtained her current employment, but continue under present circumstances. She owes large balances for student loans, which were temporarily put in forbearance of payment status at her request, but remain unpaid. She also has numerous medical and consumer debts, none of which are individually significant, but which cumulatively overwhelm her ability to address and resolve them. She also owes between \$19,000 and \$60,000 in unpaid federal income taxes with accumulated interest and fees. She tried, but failed, to address some of these obligations through a Chapter 13 bankruptcy that was closed for failure to make required payments. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes six conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Some of Applicant's financial troubles arose from employment circumstances that were beyond her control, but they were not resolved by obtaining her current job. She offered no evidence of professional credit counseling, has not reestablished financial solvency, and has not repaid or complied with repayment agreements concerning any of her medical, consumer, and tax delinquencies. She admittedly could not demonstrate the means to successfully establish a pattern of financial responsibility. She accordingly failed to establish mitigation of security concerns raised by her acknowledged delinquent debts under AG ¶¶ 20(a), (b), (c), (d), or (g).

Although she formally denied several of the debts alleged in the SOR, those denials were based on her inability to recall or recognize the debts rather than any substantiated basis to dispute their legitimacy. Accordingly, she did not show mitigation under AG ¶ 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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) 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has demonstrated her good character in overcoming many obstacles, achieving educational success, and providing important social services to others. However, she has not resolved her extensive delinquent indebtedness through repayment or established affordable repayment agreements. Applicant did not provide persuasive evidence of financial rehabilitation or sufficient income stability to ensure solvency in the future. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence establishes significant doubt as to Applicant's national security eligibility. She did not meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.pp:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant national security eligibility. National security eligibility to occupy a designated sensitive position is denied.

DAVID M. WHITE
Administrative Judge