



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXX) ISCR Case No.19-00050
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esquire, Department Counsel
For Applicant: *Pro Se*

10/28/2020

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case [transcript (Tr.), Government exhibits (GE) 1-5, hearing exhibit (HE) I, and Applicant exhibits (AE) A-J], I deny Applicant’s clearance.

On 25 January 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.¹ Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 17 April 2019 and I convened a hearing 15 May 2019. DOHA received the transcript 3 June 2019, and the record closed.

¹DoD acted under Executive Order 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, effective on 8 June 2017.

Findings of Fact

Applicant admitted SOR financial allegations 1.b, 1.d-1.n, and 1.p. She denied the remaining financial allegations and the falsification allegation. She is a 38-year-old junior program analyst employed by a defense contractor since August 2015. She was employed in a similar position from October 2006 to April 2010, when she left because of employment discrimination related to her medical issues, and from November 2010 to June 2014, when she left voluntarily. Thus, she was unemployed with medical issues April-November 2010, and voluntarily from June 2014 to August 2015.. Applicant has never married, and has a 15-year old son. She has not previously held a clearance, although she discovered as part of this clearance process that a previous employer had submitted a clearance request that had not been processed before she left that employment.

The SOR alleges, and GE 1-5 substantiate, 27 delinquent debts totaling almost \$44,000. Applicant admits 13 debts totaling almost \$27,000. Applicant reported one resolved debt—not at issue in the SOR—on her September 2015 clearance application (GE 1), but failed to report the remaining debts, resulting in the falsification allegation. She was confronted with these debts, and discussed them, during subject interviews with a Government investigator on 15 October 2015, 2 March 2016, and 16 May 2016 (GE 2), based on her September 2015 credit report (GE 3). She asserted that she was unaware of these debts until she was confronted by the investigator.

Applicant's debt denials appear to be related to the fact that SOR debts 1.a and 1.c do not appear on the three February 2019 credit reports she submitted with her Answer, a claimed, but not documented, dispute with the SOR 1.o creditor, and her claim that SOR 1.q-1.aa debts were resolved. She also claimed to be working on a settlement amount with the SOR 1.k creditor, without corroboration.

The delinquent debts comprise an \$18,769 automobile debt (SOR 1.k), 15 delinquent medical debts totaling \$9,053 (SOR 1.a-1.h, 1.t, and 1.v-1.aa), and 11 delinquent consumer credit accounts (SOR 1.i-1.j, and 1.l-1.s and 1.u). Applicant's Answer included February 2019 debt validation letters to each of the creditors for the admitted debts, except for the automobile loan at SOR 1.k. However, the letters were generic, not identifying the dates of the derogatory credit reports, any account balances, account numbers, or previous creditors. She sent no letters to any of the creditors for the debts she denied.

Of the 15 medical debts alleged (SOR 1.a-1.h, 1.t, and 1.v-1.aa), 13 were for the same medical provider and held by the same creditor (SOR 1.b-1.h, 1.t, and 1.w-1.aa). During her subject interviews, she acknowledged that she received the medical treatment recorded, but asserted that she either had insurance to cover the bill or was receiving coverage through the state. Nevertheless, she stated that she would investigate the debts and pay any balance owed. She claimed, without corroboration, that the amount alleged in SOR debt 1.k was incorrect, and that she was working with the creditor to arrange a repayment plan. She generally acknowledged the non-medical debts, stating specifically that she planned to pay SOR debt 1.i within the next six months, would pay SOR debt

1.m within the next 6-12 months, and had her father pay SOR debt 1.n. She asserted that SOR debt 1.o was fraud by a former roommate. However, her father had not paid SOR debt 1.n, and she took no documented action on any of the debts she discussed with the investigator.

Applicant's February 2019 creditor letters garnered some responses from the creditors. On 25 April 2019, Applicant settled SOR debts 1.b-1.h—including the SOR 1.c debt that she had previously denied—at a 50% discount (AE A). On 15 March 2019, the SOR 1.i collection agent stated that it was ceasing collection on the account and would have it removed from her credit file, despite Applicant having previously admitted this debt (AE B). On 24 April 2019, Applicant settled SOR debt 1.j at a one-third discount (AE C). In February 2019, Applicant documented some sporadic payments on the automobile loan at SOR 1.k between July 2016 and November 2018, along with a two-payment settlement amount at a substantial discount, due in late May and late June 2019 (AE D). In April 2019, the SOR 1.l creditor agreed to accept \$800 in settlement of the debt, now grown to over \$2,500; Applicant provided a copy of a May 2019 check for that amount, payable to the creditor (AE E). In March 2019, the SOR 1.m collection agent stated that it had stopped collection action on the account, but would continue to report any account activity to the credit bureaus (AE F). On 23 April 2019, the SOR 1.n creditor reported that Applicant had completed a settlement payment at a 40% discount (AE G). Applicant received no response from the SOR debt 1.p collection agent, but provided a March 2019 update from a credit bureau reflecting that the collection agent was removing the account from Applicant's credit report (AE H). Applicant also documented some efforts to locate the SOR 1.v (AE I) and SOR 1.w (AE J) collection agents, two medical debts Applicant denied as having been resolved.

Applicant's testimony generally followed her exhibits. She testified that she could not find the SOR 1.a creditor, was disputing the SOR 1.o debt as fraud by a former roommate, and that the SOR 1.q-1.s creditor had no record of any debts in her name. However, she corroborated none of these claims (Tr. 29). She stated that SOR debts 1.t-1.u (not a medical bill) and 1.x-1.aa were all held by the same collection agent as SOR debts 1.b-1.h, and the collection agent had stated that SOR debts 1.b-1.h were the only debts held by that agency. Applicant claimed, again without corroboration, that she paid these debts in 2015 after her interview (Tr. 31, AE A).

Applicant attributed her financial problems to her unemployment periods, whether voluntary or not, her son's father's sporadic payment of child support, and her mother's death in 2012, followed in regular order by the deaths of other family and near-family members. She also stated that when her living arrangements changed, her son's father and other roommates did not always forward her mail.

Applicant testified that she has \$600-700 positive monthly cash flow, and her current job provides health insurance (Tr. 59-62). However, she did not provide any budget. Moreover, she did not provide any evidence of any financial or credit counseling she may have received. She provided no work or character references, or any evidence of community involvement.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.²

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Applicant acquired significant debt for a variety of reasons, some beyond her control, some not. She did not corroborate her claims that she resolved many of her debts after she became aware of them in 2015, and those debts may have aged off her credit reports. The debt resolutions she has documented were only undertaken after she received the SOR, more than three years after she became aware of them.³

Applicant only partially meets the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple, and ongoing; so they cannot be

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations;

considered unlikely to recur.⁴ Some of her debts were due to circumstances beyond her control, and but while her claimed efforts in 2015 might constitute dealing with the debt responsibly (if better documented), the fact that she did not address nearly half the SOR debts until after she received the SOR means that these debts cannot be considered to have been responsibly addressed.⁵

Similarly, her belated efforts to address only the debts she admitted undercuts any claim of reformed financial habits. The Government is not the collection agent of last resort. Applicants are expected to deal with their finances responsibly regardless of the Government's interest. Applicant provided no evidence of credit or financial counseling, or a budget to address her current financial situation; so I cannot conclude that her financial problems are behind her.⁶ Moreover, belated efforts to pay her debts belies a good-faith effort to satisfy her debts.⁷

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.⁸ Applicant's belated efforts do not constitute such a plan. Moreover, there is no "whole person" evidence to support a "whole-person" analysis arguing for granting her clearance notwithstanding her financial issues. I conclude Guideline F against Applicant.

The Government did not establish a case for disqualification under Guideline E. I accept her testimony that she reported the one debt she knew about on her clearance application, and only became aware of the SOR debts, when she was confronted with them during her interviews. I conclude Guideline E for Applicant.

⁴¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁵¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁶¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

⁷¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁸ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-aa:	Against Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph a:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR.
Administrative Judge