



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 19-01236
)
)
Applicant for Security Clearance)

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

01/07/2020

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns arising from delinquent debts. National security eligibility for access to classified information is denied.

Statement of the Case

On October 10, 2017, Applicant submitted a Questionnaire for National Security Positions (SF 86). On June 25, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, (Financial Considerations). The action was taken 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 the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective on June 8, 2017.

Applicant answered the SOR in writing (Answer) on August 1, 2019, and requested a hearing before an administrative judge. On September 3, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On September 24, 2019, DOHA issued a Notice of Hearing setting the case for November 13, 2019. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified. She offered Applicant Exhibits (AE) A and B. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on November 26, 2019. The record remained open until December 9, 2019, to give Applicant an opportunity to submit additional exhibits. Applicant timely submitted seven documents that I marked as AE C through I. Department Counsel did not object to those submissions, but did comment on their content. I marked Department Counsel's email as Hearing Exhibit 1.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.e, and 1.j. She denied the allegations in SOR ¶¶ 1.f through 1.i, and provided explanations. Her admissions are incorporated into these findings.

Applicant is 34 years old. She was married from 2006 to 2013, and has a child from that marriage of whom she has sole custody. She served on active duty in the Navy from 2004 to 2014, when she was honorably discharged as an E-5. While serving she held a security clearance. (GE 1)

After leaving the service, Applicant was unemployed from September 2014 until April 2015. She attended college fulltime during that period, and used her veteran's benefits for tuition and housing. In April 2015, she started a position with a federal contractor and had an annual salary of \$137,000. She was terminated in November 2015 because she did not have a security clearance. She was then unemployed from December 2015 to August 2016, and returned to college fulltime. She has two more classes to complete for an associate's degree. From September 2016 to June 2017, she worked for a state social service agency and earned \$29,000 annually. She was unable to pay her expenses on that salary and left that position. She then moved back into her family's home. In October 2017, she started working for a federal contractor. She worked for federal contractors up to September 2019 when her most recent contract ended. Her salary for the last two years was about \$50,000 annually. (Tr. 23-29, 34-40; GE 1, 2)

On October 10, 2017, Applicant submitted a security clearance application. In it, she disclosed delinquent debts. She attributed them to a lack of employment. (GE 1) In July 2018, a government investigator interviewed her. During the interview, she discussed her background, employment history, and other issues, including some of the delinquent debts listed on a credit report and subsequently alleged in the SOR. (GE 2)

Based on credit bureau reports (CBR) from March 2019 and November 2017, the SOR alleged nine debts, which became delinquent between 2014 and 2017, and totaled \$30,382. The SOR also alleged an unpaid state tax lien for \$2,570 that was filed in 2018 for tax year 2014. (GE 3, 4) The status of each debt is as follows:

1. (1.a) The \$7,758 charged-off credit card account was settled for \$3,491 and was paid in September 2019. Applicant opened the account in April 2016, while unemployed and used it for living expenses. It was charged off in November 2017. She stated she was making monthly payments on the account when she started the security clearance process. This debt is resolved. (Tr. 40-45; AE A at 2; AE C).
2. (1.b) The \$7,550 debt owed to a credit union was settled for \$2,138 and paid on November 14, 2019. She opened the account in May 2014 while on active duty. It was charged off in October 2017. She had been making monthly payments of \$100 since May 2018. This debt is resolved. (Tr. 45-48; GE 2; AE D)
3. (1.c) The \$6,190 debt owed to an apartment complex was settled for \$4,344 and paid in full on June 23, 2019. She had been making payments on it. This debt is resolved. (Tr. 49-50; AE 2 at 3, AE E)
4. (1.d) The \$4,078 charged-off account owed to a bank was settled for \$1,506, and is paid. She opened the account in March 2014 and it became delinquent in May 2014. She started making payments on this personal loan in February 2019. This debt is resolved. (Tr.50-52; GE 1; AE I)
5. (1.e) The \$2,626 charged-off account owed to a credit union was settled for \$525. She opened the account in May 2016, while unemployed. She started making payments in January 2019 and paid it off on November 14, 2019. This debt is resolved. (Tr. 52-53; GE 3; AE F)
6. (1.f) Applicant testified that the \$418 charged-off debt owed to a retail store was not her debt, although she had an old account with the creditor. She contacted the creditor, who told her that it did not have information linking any charges to her account, meaning she did not have a delinquent debt. She wrote the creditor a letter about a possible fraudulent charge. In November 2019, the retailer sent Applicant a response stating that it was no longer attempting to collect the debt. It no longer appears on her November 2019 credit report, although it was on the Government's March 2019 credit report. This debt is resolved. (Tr. 54-56; GE 3; AE A)
7. (1.g) Applicant denied owing the \$385 charged-off credit card debt. According to the November 2017 CBR, this account was opened in December 2012 and charged-off in September 2013. Applicant stated in her Answer that on August 1, 2019, she called and spoke to a specific agent with the creditor, who told her that there was no open or closed account in her name. It does not appear on her March or November 2019 CBRs. This debt is resolved. (Tr. 58-59; GE 3, 4; AE A) (Inadvertently, this debt was not discussed during this hearing.)

8. (1.h) Applicant denied owing the \$924 collections account debt owed to a cable company. She said she previously had service with the company and paid the contract in full. She tried to contact the collection agency for the creditor, but could not find a working number. The account was reported as delinquent in November 2017 and listed as open on the Government's November 2017 CBR. The debt does not appear on the Government's March 2019 CBR or Applicant's November 2019 CBR. This debt is resolved. (Tr. 58-60; GE 4 at 19, GE 3; AE A)
9. (1.i) The \$456 collections account for utilities is resolved. It is listed on Applicant's November 2019 CBR as having been paid in January 2018, and there is also on a letter from a collection agency noting it was paid in November 2019. This debt is resolved. (Tr. 60-61; AE A at 3, AE H)
10. (1.j) In June 2018, a state filed a tax lien against Applicant for a \$2,570 judgment debt for tax year 2014. Applicant learned of this debt when she received the June 2019 SOR. She thinks notices regarding this lien were sent to her old address so she did not know about it. She contacted the state, and was told that this lien was filed because she had not filed her state income tax return that year. She has not entered into a repayment plan yet because she has not had enough money to make payments. She intends to pay it; however, there is no evidence that she has filed the 2014 return. This debt is unresolved. (Tr. 62-65; GE 5)

Applicant has not been employed since October 2019. She knew her job was terminating and planned for the loss of income. She prepaid her November and December 2019 rent, along with other expenses. Currently, she receives \$430 in child support and \$460 in disability from the veteran's administration (VA) each month. She also collects \$357 weekly in unemployment. She is returning to college in January 2020, and will use her veteran's benefits. She will take the minimum number of classes to remain in fulltime status. (Tr. 65-72) Applicant has not taken financial or credit counseling recently; however, she took budget courses while serving in the military. (Tr. 30-31) I offered Applicant the opportunity to submit a written budget, but she did not do so. (Tr. 75-76)

In addition to filing a \$2,570 tax lien against Applicant in June 2018 for her unpaid 2014 taxes, the state also filed a \$1,515 tax lien against her in April 2019. (GE 6) Applicant admitted that she owed both liens. In discussing them, Applicant stated that she has not filed her 2018 federal or state income tax returns and may owe taxes for that year, although she appeared unclear as to that issue. She said she filed her 2017 tax returns. (Tr. 32-33, 64-65, 73-74.)

The SOR did not allege a security concern related to the 2019 tax lien or Applicant's unfiled 2018 federal or state income tax returns or unpaid taxes for that year. This information is not considered for disqualifying purposes, but may be considered in

making a credibility determination, in the application of mitigating conditions, and in a comprehensive whole-person analysis.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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. 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 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 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 information.

Section 7 of Executive Order 10865 provides that an adverse decision 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* 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:

Failure or inability 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 information. Financial distress can also be caused by 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 acts to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including delinquent debts and an unpaid state tax lien. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out conditions that could potentially mitigate those financial security concerns under this guideline:

- (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.

Applicant began accumulating delinquent debts after she left military service in 2014, and subsequently experienced periods of unemployment and underemployment from 2014 to 2017. Those were circumstances that may have been beyond her control to some extent, although based on her voluntary choices. However, she did not present sufficient evidence of attempting to responsibly manage her delinquent debts until 2018 and 2019. The evidence does not establish full mitigation under AG ¶ 20(b).

Applicant has not participated in credit or financial counseling since leaving military service. She presented evidence that nine alleged delinquent debts, which totaled \$30,282, were recently paid or resolved through partial payment agreements. AG ¶ 20(c) provides some mitigation for the debts alleged in SOR ¶¶ 1.a through 1.e, and 1.i. The \$2,570 state lien has not been resolved and is not under control.

Applicant initiated a good-faith effort to resolve delinquent debts through payment plans prior to the issuance of the SOR. She established some mitigation under AG ¶ 20(d) as to the debts alleged in SOR ¶¶ 1.a through 1.e, and 1.i. Applicant denied and disputed the debts alleged in SOR ¶¶ 1.f through 1.i. She presented sufficient evidence to show that the debts alleged in SOR ¶¶ 1.f through 1.h, were not her debts. She established mitigation under AG ¶ 20(e) as to those debts. Applicant has not established a payment plan for her unpaid 2014 state income taxes. AG ¶ 20(g) does not apply.

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(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) 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 national security eligibility must include 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 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 a 34-year-old veteran, who served in the Navy for 10 years. After leaving military service in 2014, she began experiencing financial difficulties as a consequence of being unemployed or underemployed for periods of time. She secured steady employment in late 2017, and began addressing some delinquent debts in 2018. Although Applicant has resolved the delinquent retail and personal accounts alleged in the SOR, she has not filed her 2014 state tax return, which she learned in June 2019 was the basis for the 2018 tax lien. In addition, she has not resolved or investigated the state tax lien filed in June 2019. She indicated that she has not filed her 2018 federal and state tax returns and does not know the amount of taxes she may owe. Applicant's failure to responsibly manage her federal and state tax obligations is a matter of ongoing concern.

The record evidence leaves me with doubt as to her judgment and suitability for a security clearance. Applicant did not mitigate the security concerns arising under the financial considerations guideline.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant
Subparagraph 1.j:	Against 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 a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge