



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



In the matter of:)
)
) ISCR Case No. 19-01563
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Department Counsel
For Applicant: *Pro se*

May 7, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On June 11, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on July 1, 2019. She requested that her case be decided by an administrative judge on the written record without a hearing. (Item 1.) On October 31, 2019, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant and received by her on November 13, 2019. The FORM notified

Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 8, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 8.

Findings of Fact

Applicant is 46 years old, and married with three children, and one step-child. She has a high school diploma. She is employed by a defense contractor as a Stock Clerk. She is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

The SOR alleged that Applicant incurred five delinquent debts owed to creditors on accounts that were charged off or placed for collection totaling approximately \$87,517. In her answer, Applicant partially admits and partially denies each of the debts. Credit reports of the Applicant dated November 22, 2017; April 16, 2019; and October 23, 2019, confirm this indebtedness. (Government Exhibits 6, 7 and 8.)

Applicant began working for her current employer in 2007. Since then, there have been no noted interruptions in her employment. Applicant asserts that each of the accounts listed in the SOR have now been brought current or have been disputed with the collection company. (Applicant's Answer to SOR.) Applicant has not provided any evidence to support this assertion.

The following delinquent debts are of security concern:

- a. A delinquent debt owed to a creditor for a home equity line of credit account was charged off in the approximate amount of \$64,108. Applicant denies the debt, claiming that it was brought current in July 2019. Applicant's credit reports disclose that this was a joint account that was last paid in 2017, and was charged-off in October 2019. (Government Exhibit 8.) Applicant has provided no documentary evidence in the record to show that the account is current. Accordingly, this allegation is found against the Applicant.
- b. A delinquent debt owed to a bank in the amount of \$12,749 was charged off. Applicant denies the debt and claims that she disputed the debt with the collection agency. (Government Exhibit 3.) Applicant provided no documentary evidence to show that the debt was disputed or resolved. However, since Applicant's credit reports indicate that she was only an authorized user on the

account, this allegation is considered to be mitigated. Accordingly, this allegation is found for the Applicant.

- c. A delinquent debt owed to a bank in the amount of \$7,503 was placed for collection. Applicant denies this debt, claiming that it is not her debt. Applicant's credit report indicates that this was a joint account that was last paid in 2014. (Government Exhibit 6.) Her most recent credit report reflects, "Consumer disputes after resolution" and reflects that the account continues to have a balance of \$7,503. (Government Exhibit 8.) Applicant provided no documentary evidence to show that the debt is not her debt. Accordingly, this allegation is found against the Applicant.
- d. A delinquent debt owed to a bank in the amount of \$2,875 was charged-off. Applicant admits this debt and claims that she has paid it. Applicant has provided no documentary evidence to show that the debt has been resolved. Applicant's credit report reflect that this is a joint account that was charged off for \$7,875 in October 2017 and continues to have a balance due of \$1,195. (Government Exhibit 6.) Accordingly, this allegation is found against the Applicant.
- e. A delinquent debt owed to a creditor in the amount of \$282 was placed for collection. Applicant admits the debt and claims that she paid it. One of Applicant's credit reports reflects that the account had been placed for collection and had a balance due of \$282 as of November 2017. (Government Exhibit 6.) Applicant has not provided any documentary evidence to show that she resolved the debt. However, since her most recent credit report does not reflect the debt as owing, this allegation will be considered mitigated. (Government Exhibit 8.) Accordingly, this allegation is found for the Applicant.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because she engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about her reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant completed a security clearance application dated August 21, 2017. In response to Section 26, Financial, she was asked, "In the past seven years have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed? . . . In the past seven years have you defaulted on any type of loan? . . . In the past seven years have you had bills or debt turned over to a collection agency? . . . In the past seven years, have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? . . . In the past seven years have you been over 120 days delinquent on any debt not previously entered? . . . Are you currently over 120 days delinquent on any debt?" Applicant answered, "No", and failed to list that she had been delinquent on debts in the past seven years, as noted in Guideline F above.

On December 21, 2018, as part of her security clearance background investigation, Applicant was interviewed by an authorized investigator for the Department of Defense. During the interview, Applicant disclosed that her husband had been laid off from approximately April 2014 to December 2015, and that they had fallen behind on paying their bills. Applicant was unsure why she had not listed the debts on the security clearance application, and was unable to provide details regarding the delinquent accounts. She stated that she intended to speak to her spouse regarding the debts. According to the investigator's summary, the Applicant was given the opportunity to provide additional documentation regarding the financial delinquencies and she did not do so despite being contacted several times via phone and e-mail. (Government Exhibit 5.)

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 to be 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, administrative judges apply the guidelines 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 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. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain 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 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 adverse 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 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.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant incurred significant delinquent debt that she has not paid. At this time there is insufficient information in the record to conclude that she is financially stable, or that she can afford her lifestyle, or that she has the financial resources available to handle her financial obligations. There is no evidence in the record to show that any

regular monthly payments of any sort are being made toward her debts. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

(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;

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

(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.

During her security clearance interview with the investigator, Applicant acknowledged her financial difficulties, and said that her husband was laid off from April 2014 to December 2015. However, she provided no further details about this situation. Without more information, the record is void of mitigation. There is no evidence in the record to show that circumstances beyond the Applicant's control contributed to her financial difficulties. There is no detail in the record to show how or why Applicant became so delinquently indebted. Nor is there evidence to show that Applicant has made any effort to resolve her debts. To date, Applicant has not provided any documentation corroborating her claims to have brought the accounts current or disputed them and/or has been released from responsibility. What is known is that Applicant has been gainfully employed since 2007 and yet remains excessively indebted. None of the mitigating conditions apply. This guideline is found against the Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's credit reports reveal that she was very far behind on several accounts at the time she completed the security clearance application in August 2017. Furthermore, several accounts were charged off only a short time after completing the application, in October 2017. It can be presumed that she knew about her delinquent debts at the time she completed the security clearance application. Applicant deliberately concealed her financial delinquencies from the government on this application. There is no excuse for this dishonesty. Deliberately concealing material information from the government on a security clearance application raises serious questions about one's credibility and trustworthiness. None of the mitigating conditions are applicable. This guideline is found against the 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(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 relevant facts and circumstances surrounding this case. Applicant was given several opportunities to provide documentation to support her assertions concerning her financial delinquencies and chose not to submit anything. First, Applicant did not take advantage of the opportunity she was given by the investigator to provide documentation, despite several attempts following her interview to obtain this information. Second, Applicant did not provide this evidence in her answer to the SOR. Third, Applicant did not submit a response to the FORM. Insufficient mitigation has been shown. Accordingly, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

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.c, and 1.d.	Against Applicant
Subparagraphs 1.b., and 1.e.	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge