



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01828
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2020

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. She refuted the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On July 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 13, 2019, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on November

20, 2019. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant did not submit a timely response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on January 8, 2019.

Findings of Fact

Applicant denied all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. She earned an associate's degree in 2001 and a bachelor's degree in 2007. She has two daughters, ages 15 and 21 years old. She has worked from June 2017 to the present as an administrative assistant for a nongovernment entity. From July 2015 to June 2017, she was unemployed due to a medical problem and her recovery. Before then she worked for a federal contractor. She stated in her security clearance application (SCA) that she resigned from that job because she filed a complaint and was mistreated.

Applicant completed a SCA in December 2017. Section 26 inquired about Applicant's finances. In response to questions asking her if in the past seven years she had possessions or property voluntarily or involuntarily repossessed or foreclosed; had defaulted on any type of loan; had bills or debts turned over to a collection agency; was over 120 days delinquent on any debt not previously entered; or if she was currently over 120 days delinquent on any debt, Applicant answered "yes" to each of these inquiries. (Item 3)

In Applicant's narrative response in the SCA, she listed a debt owed to Car Company K. She disclosed she owed \$10,500 on the car loan. She stated the reason for the financial issue was "unemployment." She stated regarding the loan's current status: "Working towards a settlement agreement to get the amount reduced and paid off in full." (Item 3) The date the financial issue began was October 2015. She further stated: "I have been unemployed since July 2015 and only recently have started working again. I am working towards a settlement agreement to get the amount reduced and paid off in full." (Item 3) This debt is listed on Applicant's credit reports dated February 2018, November 2018, and July 2019. (Items 5, 6, 7)

The SOR ¶ 1.a alleges Applicant is indebted to Car Company K on a charged-off account in the approximate amount of \$22,354. Applicant denied this debt. She stated in her Answer to the SOR (Answer):

I deny this is my account. This account was opened fraudulently in my name without my consent. I have been disputing this account as of 2015. This item is currently in progress as it pertains to a new dispute and reinvestigation as of 7/2019. This item is listed only on my Equifax and Experian Credit Reports. Please see attached documents for your review

as it pertains to Experian & Equifax reinvestigations in progress. Please see attached documents as it pertains to my Transunion Credit Report showing that this item is not listed. (Item 2)

Applicant disclosed in her SCA that she was indebted to the utility company and the subsequent collection company in the amount of approximately \$500 (SOR ¶ 1.k) (Item 2). She stated:

I have been disputing this bill with [utility company] from an old bill at my last address that I rented and moved out in October 2015 despite having the power disconnected in my name and months to a year after I moved the lights were still on in my name and had never ever been disconnected. (Item 2)

She stated the current status of the debt was as follows:

I have been unemployed since July 2015 and only recently have started working. I am working towards a settlement agreement to get the amount reduced and paid off in full. (Item 2)

The SOR ¶ 1.k alleges Applicant is indebted to a collection company for an account placed for collection by a utility company in the approximate amount of \$563. Although she disclosed this debt in the SCA, Applicant denied this debt in her Answer:

I deny this is my account. This account was opened fraudulently in my name without my consent. This account was never listed on any of my 3 credit bureaus and reports. This item is not listed, reflect or showing at all on any of my current credit reports as of 08/20/19. Please see attached documents for your review as it pertains to Experian, Equifax, and Transunion. (Item 2)

Applicant was interviewed by a government investigator in March 2018. During the interview she was asked if she had any bills or debts turned over to a collection agency. Applicant responded "yes." She stated she had a debt to Car Company K (SOR ¶ 1.a) and one owed to a utility company (SOR ¶1.k) She acknowledged the debt to the utility company and the collection company that had assumed the debt. She said she was unfamiliar with the other debts that she was confronted with and are alleged in the SOR. (Item 4)

Credit reports from February 2018, November 208, and July 2018 corroborate all of the SOR allegations. (Items 5, 6, 7)

In Applicant's Answer she stated:

I was a victim of the Equifax Security Break/File A Claim; OPM Security Breach; The Cross vs Wells Fargo Bank, NA Breach; Wells Fargo Bank, NA TCPA Settlement;

The Marriott Data Breach and The Souter v. Equifax Information Services, LLC/Settlement. (Item 2)

Applicant provided documents to show she disputed the remaining debts in the SOR, stating that they were opened fraudulently and without her consent. Some of the different entities responsible for data breaches provided her cash settlements, others removed the accounts from their databases and from her credit reports. (Item 2)

Applicant provided no credible explanation for why she disclosed in her SCA the debts she incurred that are alleged SOR ¶¶ 1.a and 1.k and said that she was unable to pay them due to her unemployment. She stated that she was working on settlements with these creditors. In her Answer, she asserted these were fraudulent accounts opened without her consent. Her explanations are inconsistent. These accounts are unresolved.

The SOR alleged that Applicant was terminated from her employment in 2015 and was not eligible for rehire. Applicant provided an email showing she offered her resignation to the employer and it was accepted. (Item 2) The Government did not provide evidence that Applicant was terminated from that employment and not subject for rehire.

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 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, these guidelines are applied in conjunction with the factors listed in 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an 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 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 relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts from at least 2015 that are not resolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; 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.

Applicant claimed that all of the debts alleged in the SOR are accounts that were fraudulently opened in her name without her consent. Based on the contradictory evidence she provided in her SCA and during her background interview, her denials of responsibility for her debts are not credible, in particular those regarding the debts alleged in SOR ¶¶ 1.a and 1.k. Her failure to be honest about those debts, leads me to question her claims regarding the other SOR debts. That being said, the creditors and various entities responsible for data breaches have resolved her claims and disputes in her favor. I find she has mitigated the debts in SOR ¶¶ 1.b through 1.jj and 1.l. AG ¶ 20(e) applies to them.

Applicant clearly stated in her SCA, to which she swore to under oath, that the debts in SOR ¶¶ 1.a and 1.k belonged to her. She confirmed this in her response to questions by the government investigator. These debts are recent and ongoing. She provided no evidence that she has attempted to pay them or resolve them. Applicant's conduct casts doubt on her reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant's unemployment was beyond her control. She claimed she was working on a settlement with the creditors in SOR ¶¶ 1.a and 1.k. She failed to provide evidence to support she has paid or resolved these debts. It is clear they were not the result of fraud. AG ¶ 20(b) has minimal application.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. I find the following potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.

The SOR alleged Applicant was terminated from employment in July 2015 and not eligible for rehire. No evidence was provided by the Government regarding her alleged termination or status for rehire. Applicant provided evidence that she resigned. The disqualifying condition does not apply. Applicant refuted this allegation, and I find in her favor under this guideline.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under

Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 44 years old. She experienced financial problems when she was unemployed. She claimed that all of the debts alleged in the SOR were due to fraudulent activity conducted without her consent. Based on her disclosures on her SCA, which were later confirmed during her interview with a government investigator, at least two of the alleged debts were her responsibility. Although she has managed to successfully dispute all of the other alleged debts, her inconsistent statements regarding the two unresolved debts raise sufficient concerns about her honesty and trustworthiness. She has not met her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. She successfully refuted the Guideline E, personal conduct allegation.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l	For Applicant
Paragraph 2, Guideline E:	Refuted
Subparagraph 2.a:	Refuted

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge