



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



In the matter of:)
)
) ISCR Case No. 19-02336
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2020

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On August 23, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), and Administrative Guidelines (AG) implemented on June 8, 2017, the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on November 20, 2019. The Defense Office of Administrative Hearings (DOHA) issued a notice of hearing on January 13, 2020, scheduling the hearing for February 6, 2020. The Government offered Exhibits (GE) 1 through 6, which were admitted into the record without objection. Applicant testified in her own behalf and presented 13 documents, which were marked AE A through M, and

admitted into the record without objection. The transcript was received on February 19, 2020.

Findings of Fact

Applicant, age 35, is married and has two children. She graduated from high school in 2003 and attended college classes for several years, the most recent in 2016 until 2017, but she has not obtained her undergraduate degree. She has received various computer certifications. (Tr. 30) Applicant completed her security clearance application on April 24, 2018. She has held a security clearance since 2005. She has been employed with her current employer since October 2015 as a help desk technician. (GE 1)

The SOR alleges that Applicant has delinquent debt in the amount of \$39,000, of which \$10,000 is student loan debt. The other delinquent debts are charged-off accounts or collection accounts that resulted from her unemployment. Applicant admitted the SOR allegations and provided explanations. SOR allegation 1.a is a duplicate of 1.f and was withdrawn at the hearing by the Government.

Applicant acknowledged her delinquent debts, but stated that she was unemployed for five months from 2014 to 2015. She disclosed her delinquent debts on her security clearance application. Her husband works but his job depends on the seasons and there are times when he does not earn very much. (Tr. 66)

When Applicant lost her employment, she cashed out her retirement account (401(k)) and received unemployment. She hoped that this would keep her "afloat." (Tr. 27) When she obtained a job in 2015, her salary was lower than her previous income. Her current employment provides her with about the same income as when she was previously employed. She has taken positive steps to resolve her debts and to live frugally and stopped certain services such as television and landline phone. (Tr. 28)

As to SOR allegation 1.b, a charged-off account in the amount of \$10,819, Applicant's husband used the life insurance from his father's death and paid the entire amount. The default was the direct result of unemployment at the end of 2014. As Applicant prioritized her delinquent debts, this was the last account that was resolved, relating to a consolidation loan. (AE A and C, Tr. 37)

SOR allegation 1.c, a charged-off account in the amount of \$9,809, was a loan from 2010 for a jeep refinancing. This account became delinquent in 2014 after Applicant's unemployment. This account is now paid. The insurance policy money from Applicant's father-in-law was also used to pay this debt. (AE A and D)

SOR allegations 1.d and 1.e, represent student loans from 2016 that were not reimbursed by Applicant's employer because she did not successfully complete the courses. Her employer did reimburse costs for college classes when she received a passing grade. (Tr. 40) Applicant received a notice of payment in 2017 and made two payments of about \$100. (Tr. 41) She admits that she put this account aside and arranged

a payment plan in 2019. She had made three monthly payments thus far of \$352, and will be making ten more payment to rehabilitate the loan. (Tr. 42, AE E)

As to SOR allegation 1.f, a collection account in the amount of \$2,474, Applicant used a credit card to buy new tires for her car. She had been paying on the account, but she stopped when she was laid off. The tires were purchased in 2013. This account has been resolved. Applicant paid the account in October 2019. (AE B)

As to SOR allegation 1.g, a collection account in the amount of \$502, Applicant had been making payments of \$15 twice a month since 2015. She used some of the life insurance money referred to above to settle the account. (AX F)

As to SOR allegation 1.h, a collection account for dental services for her son (dental surgeries) in the amount of \$1,882, Applicant has been making payments since 2015, and the current balance is \$375. (AE G)

SOR allegation 1.i, a collection account in the amount of \$4,136, Applicant has been making automatic payments of \$17.29 twice a month since late 2015 and the balance is \$2,541. She will continue to make these payments through automatic withdrawal until paid in full. (AE H)

Applicant's mortgage is current. Her annual salary is about \$67,000. She obtained information from a financial counseling website and has a budget. (Tr. 53) She has a Roth IRA account. Her husband earns \$25 an hour. He pays the mortgage and maintains a separate bank account. They both share responsibility for the children. Applicant does not believe she will continue her on line college classes at this point so that she does not incur any more student loans if she does not obtain a passing grade and her employer does not pay for the course. (Tr. 68) She provided a copy of her current credit report showing that she is current on all accounts. (AE K)

Applicant submitted seven character references and her latest performance evaluation. Her lead supervisor praises Applicant for her highly professional attitude and a trustworthiness. She is described as one of the hardest-working and most-valued employee on a team of 30. (AE L) Her latest performance evaluation reflects that she had a productive and successful year and met all expectations. (AE M)

Policies

When evaluating an applicant's suitability for a security clearance, 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, “Any 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. 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts are in major part due to her unemployment in 2014-2015. She took a position after that at a lower pay rate. She is now earning income equivalent to what her salary was at the time before her unemployment. The unemployment was a circumstance beyond her control. Her student debt is the result of not being reimbursed by her employer for her two college courses due to a non-passing grade. Applicant has prioritized her delinquent debt and either paid or arranged a payment plan. She did not ignore any creditors. She has paid some accounts and others that were in a payment arrangement have been resolved. She has one or two still in an automatic withdrawal payment arrangements. She showed good faith efforts during this time. She provided documentary evidence to support all of her assertions. She has demonstrated a track record of debt payment and there is an indication that her financial situation is

under control. She obtained information from a financial website and utilizes a budget. AG ¶ 20(a)-20(d) are established. Applicant met her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.b through 1.i. for Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, including Applicant's work career and recommendations, I conclude that Applicant has mitigated the security concerns raised by her financial indebtedness. I conclude that it is with the national interest to grant her continued eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b-1.i:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge