



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



In the matter of:)
)
 -----) ISCR Case No. 18-01147
)
 Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*
01/15/2020

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information. She presented sufficient evidence to explain, extenuate, and mitigate the security concern stemming from her problematic financial history. Accordingly, this case is decided for Applicant.

Statement of the Case

On April 25, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under Guideline F, financial considerations. This action was taken under Executive Order (E.O.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended, as well as DOD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive). The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), effective within the Defense Department on June 8, 2017, apply here. Applicant answered the SOR on May 21, 2018, and requested a hearing to establish her eligibility for access to classified information.

I was assigned the case on September 13, 2018. On December 19, 2018, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing. The Government offered six exhibits, which were marked for identification as GE 1 through 6, and which were admitted without objection. Applicant offered two exhibits (AE), which were marked for identification as AE A and B, and were admitted without objection. The record was left open until January 9, 2019. Applicant timely submitted four additional exhibits, which were marked for identification as AE C through AE F and admitted without objection. The transcript of the hearing (Tr.) was received on January 4, 2019.

Findings of Fact

Applicant is 36 years old, a high school graduate with an associate degree, and is taking online courses to finish her bachelor's degree by June 2020. Applicant has six children between 16 and 3 years of age. She is unmarried, but for 18 years she lived with her partner, who is the father of her six children. He died in August 2018. Since August 2016, Applicant has been employed by a defense contractor. This is the first time she has applied for a security clearance. (Tr. 18-19, 21-23, 34, 71.)

The SOR alleged that Applicant has 18 delinquent accounts totaling \$26,978, of which \$4,939 are for medical accounts. (SOR ¶ 1; Tr. 61-62.) Applicant denied 13 of those accounts. (Answer ¶¶ 1.a-e and k-r.) She admitted five of those accounts. (Answer ¶¶ 1.f-j.) The denied debts are supported by the record. (GE 3; GE 4.)

SOR ¶ 1.a is a judgment for \$1,046. Applicant testified that this judgment has been settled, and post-hearing, she produced a document supporting that claim. (Tr. 36-38; AE C.) This debt has been resolved.

SOR ¶ 1.b is a medical debt for \$1,047. Applicant testified that she contacted the credit bureau, and they could not tell her the origin of this debt. She went online and disputed this debt, but it has not been removed from her credit report. (Tr. 39-41; GE 3, p. 2.)

SOR ¶ 1.c is a medical debt for \$623. Applicant was unable to find out the origin of this debt. (Tr. 41; GE 3, p. 2.)

SOR ¶¶ 1.d and e are collection debts for \$76 and \$73, respectively. Applicant testified that she settled those debts and produced documents post-hearing supporting that claim. (Tr. 42-43; AE D; AE E.) Those debts have been resolved.

SOR ¶ 1.f is a judgment for \$649. Applicant testified that her landlord at the time was supposed to include the cost of oil heat in her monthly rent. He failed to do so and had opened the account in Applicant's name. He proceeded to file a judgment against her. (Tr. 43-45; GE 6.)

SOR ¶¶ 1.g and h are student loans for \$3,734 and \$2,843, respectively. Applicant testified that those loans are no longer in default. At the hearing and post-hearing, she

produced documents supporting that claim. (Tr. 45-47; AE B; AE F.) Those debts have been resolved.

SOR ¶ 1.i is credit card delinquency for \$425. Applicant testified that she brought any past-due balance current in December 2017. She is supported by an exhibit she produced at the hearing. (Tr. 48-50; AE B.) This debt has been resolved.

SOR ¶ 1.j is a \$2,430 debt owed to a cell phone provider. Applicant testified that this was an account set up for her now deceased partner. She called the provider in April 2018 and was told that no amount was due. She also has a cell phone with the same provider, and she is current on that account. (Tr. 50-52.) This debt has been resolved.

SOR ¶ 1.k is a medical debt for \$1,210. Applicant testified that she was not able to find the origin of that debt and could not verify the amount alleged. (Tr. 52-53.)

SOR ¶ 1.l is a medical debt for \$860. Applicant testified that she contacted the creditor in June 2018 to remove the debt in connection with her home purchase. She has not filed any written dispute. (Tr. 53-54.)

SOR ¶ 1.m is a medical debt for \$815. Applicant testified that she called the phone number that was on the credit report and all she got was her account number. Applicant took no further steps and did not file a dispute. (Tr. 54-55.)

SOR ¶ 1.n is a debt owed to a cell phone provider for \$640. Applicant testified that she recognized this debt. She contacted the provider in about July 2016 and learned that it was an early termination fee. Applicant disputed the debt because she moved out of the provider's service area and was told that she did not have to pay an early termination fee. She did not file a written dispute. (Tr. 55-57.)

SOR ¶ 1.o is a medical debt for \$593. Applicant did not recognize this debt. (Tr. 56-57.)

SOR ¶ 1.p is a medical debt for \$523. Applicant did not recognize this debt. She explained that for all the SOR debts she denied, she was trying to clean up her credit report in connection with buying her house in August 2018. Applicant went on Credit Karma and clicked the "Dispute" selection for the denied debts. She never heard anything back from Credit Karma. Applicant has no written documentation that confirms those debts are disputed. (Tr. 20, 57-58.)

SOR ¶ 1.q is a \$428 debt for a car rental. Applicant allowed a friend to rent a car using her credit card. Applicant recalled that there was some damage to the car that her friend failed to pay. The rental was paid but not for the damage. Applicant testified that it happened when she was very young, over 10 years ago. The debt was written off, but she does not know when. Applicant is currently able to rent from the same car rental company. (Tr. 58-61.)

SOR ¶ 1.r is a medical debt for \$129. Applicant has two accounts with this medical insurer. She is not sure which account this debt is for. Applicant disputed this debt on Credit Karma in about April or June 2018. (Tr. 61-62.) (This was not alleged as a medical debt in the SOR. Based on Applicant's testimony, it is such a debt.)

Applicant testified about her personal finances. She has not taken any financial counseling. Applicant's full-time employment with the defense contractor pays \$50,000 per year. She also has a business on the side doing children's parties and other child entertainment events. That averages about \$1,500 per month. Those incomes yield \$5,667 take-home pay per month. (Tr. 24-25, 62-63.)

Applicant's mortgage is \$2,800 per month. She receives \$528 per month in child assistance. Her brother pays for her children's clothes. Applicant's gas, utilities, auto insurance, and miscellaneous expenses come to about \$785 per month. She has no car payments. Applicant owns two cars, but both are paid off. Her monthly remainder is about \$1,100 per month. Of that remainder, Applicant puts \$500 per month in the bank so she "does not see it." The remaining \$1,000 Applicant uses to pay bills. She has about \$1,500 in savings and about \$3,500 in her retirement account. (Tr.27, 29-30, 62-69.)

Applicant's deceased partner made \$75,000 per year as an electrical contractor. When he died, she lost 60% of the household income. If she needs financial help, her father, brother, an aunt, and an uncle can be counted on to assist her. Applicant has had gaps in her employment history due to a workplace injury that put her on workers' compensation. She still suffers from residual effects of that injury. Applicant also had gaps in employment due to pregnancies. (Tr. 19, 29-30; GE 1, pp. 12-19; GE 2, pp. 3-5.)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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(a), 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 not drawn 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, 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The financial considerations security concern 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. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following conditions are potentially applicable:

- (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; and

AG §§ 19(a) and (c) apply to Applicant's delinquent consumer debts. The next question is whether any mitigating conditions apply.

Conditions that could mitigate financial considerations security concerns are provided under AG § 20. The following 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; and

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

The findings of fact demonstrate that Applicant has satisfactorily resolved SOR §§ 1.a, d, e, g through j under AG § 20(d) totaling \$10,627. SOR § 1.q (\$428) is mitigated under AG § 20(a) due to the passage of time (over 10 years). Similarly, SOR §§ 1.f and n are mitigated under AG § 20(a) due to unusual circumstances that are unlikely to recur.

Applicant's medical debts totaling \$4,939 present a different issue. I have given little weight to the eight medical collection accounts that remain unresolved. Medical debt is unlike other types of debt. First, it is presumed that medical debt is incurred for necessary medical care and treatment as opposed to frivolous or irresponsible spending or otherwise living beyond one's means. Second, medical debt is usually unplanned, unexpected, and nondiscretionary. Third, it can add hundreds if not thousands of dollars in debt in a short period, which can be overwhelming for a debtor. Finally, the record shows that Applicant made good-faith (albeit unsuccessful) efforts to identify the original creditors and verify the bona fides of those accounts. In my view, having less than \$5,000 in unresolved medical collection accounts does not fatally undermine Applicant's suitability. Accordingly, the allegations in SOR §§ 1.b and c, k through p, and r are decided for Applicant.

The record does not raise concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. (AG § 2(d)(1)-(9).)

Accordingly, I conclude that Applicant met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

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, is:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-r: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge