



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



In the matter of:)
)
) ISCR Case No. 19-03174
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has a long history of delinquent debts and financial instability, as evidenced by the three Chapter 7 bankruptcies alleged in the SOR, in 1996, 2011, and 2019. Given her history. Applicant has not acted responsibly in attempting to improve her finances, and has not established enough of a track record of financial stability and payments towards her debts. She did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 16, 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. The action was taken under Executive Order (Exec. Ord.) 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* (AG), implemented by the DOD on June 8, 2017.

Applicant answered the SOR on January 27, 2020, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on September 9, 2020. On September 18, 2020, DOHA issued a notice scheduling the hearing for October 13, 2020.

On September 23, 2020, I issued a Case Management Order to the parties by e-mail. It largely concerned procedural matters relating to the health and safety of the hearing participants due to the COVID-19 pandemic, including pre-hearing submission and exchange of proposed exhibits.

The hearing convened as scheduled. Government Exhibits (GE) 1 through 13 were marked and admitted without objection. The documents Applicant submitted with her Answer were marked as Applicant Exhibits (AE) A through M and admitted without objection. Applicant testified but submitted no additional exhibits at her hearing. DOHA received the transcript (Tr.) on October 28, 2020.

Findings of Fact

Applicant admitted all three SOR allegations (¶¶ 1.a-1.c) with her Answer, which included a lengthy narrative statement. Her admissions and statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence submitted, I make the following findings of fact.

Applicant is 48 years old. She has two adult daughters, who live with her. Both are gainfully employed. Applicant and her husband are legally separated as of December 2014. (Tr. 114-116; AE E) Applicant earned a bachelor's degree in 2017, and a master's degree in 2019. (Tr. 43-44, 114; GE 1; AE I)

Applicant has worked as a federal contractor since 1993, though with certain periods of unemployment between contracts. She worked with the Department of Justice for about 10 years, until 2003. She was a contractor with the Department of Homeland Security for 12 years, from September 2003 to September 2015. She earned a salary of about \$100,000 in that job. She was laid off when her employer lost its contract. (Tr. 15-16, 42-46, 56-57, 123; Answer; AE A-AE D; GE 1, GE 12)

Applicant was unemployed until December 2015. She then worked as a contractor for the Department of the Navy, at a much lower salary (\$36,000) until December 2016. After another layoff, she was then unemployed until February 2017. Since then, she has worked as a State Department contractor. Her current salary is \$70,000. She has had a clearance for over 20 years, and is seeking to retain it. (Answer; Tr. 15-16, 45-48, 57-59, 62; GE 1)

On her most recent SCA, Applicant disclosed bankruptcy petitions that she filed in 2011 and 2018. (GE 1 at 35-36) She noted that most of her debts were student loans related to her daughters' college expenses. (GE 1 at 40, 42)

The three SOR allegations concern two of Applicant's recent bankruptcies, in 2011 and 2019, and an earlier bankruptcy, in 1996. (GE 3, GE 4, GE 6) (A 2018 bankruptcy petition, filed under Chapter 13 and later dismissed, was not alleged).

Applicant attributed the 1996 bankruptcy to youth and inexperience. She said she purchased a car she could not afford and got "way over my head" financially. (Tr. 48, 65) The Chapter 7 bankruptcy was filed in September 1996 and was discharged in December 1996. (GE 6)(SOR ¶ 1.a)

Applicant matured and later married, but her marriage was troubled and abusive. Her husband was an authorized user of many of their accounts, and she was not aware of their financial issues as she should have been. Her husband assumed responsibility for their mortgage, and she did not learn of their financial troubles until the home was nearing foreclosure. This led to the second bankruptcy. Her financial stability improved after that, through her gainful employment as a government contractor. She also furthered her education and provided financial support so her daughters could do the same. (Answer)

Applicant testified that her husband had been on workers' compensation after an accident at work as a city bus driver in about 1999, and he retired from the transit authority in 2006. The loss of his full second income contributed to the family's financial woes, as did their eventual marital separation. Applicant was also paying the living expenses and college expenses of their two daughters. She testified that the passing of both her parents also contributed to her financial instability. (Answer; Tr. 48-50, 55 GE 7, GE 8, GE 12 at 26-28; GE 13)

Applicant filed Chapter 7 bankruptcy in May 2011 after seeking advice on how to save her home from foreclosure. In that bankruptcy petition, she disclosed several hundred thousand dollars of debts, including almost \$600,000 in mortgages and over \$150,000 in student loans. The bankruptcy was discharged in August 2011. (Answer; GE 7, GE 8) (SOR ¶ 1.b)

Applicant's financial problems continued. She attributed her more recent issues to her 2015 job loss and subsequent loss of income. In late 2016, Applicant retained a debt-relief company to assist in regaining financial stability. (AE F) She paid them over \$1,000 a month in fees for several months, and over \$8,000 total, but this did little good. She no longer retains them. (Answer; AE F-AE H; Tr. 43, 111, 117-119) She also participated in credit counseling during her bankruptcies. (Tr. 113, 119-120) She keeps a written budget and has learned to stay within it. (Tr. 64, 138-139)

In September 2018, Applicant filed for bankruptcy under Chapter 13, but that bankruptcy petition was later dismissed. (Tr. 53-54, 83-89; GE 9) In May 2019, Applicant refiled for bankruptcy under Chapter 7. (Tr. 91-99; GE 10, GE 11) (SOR ¶ 1.c) She reported about \$488,000 in liabilities. Of those, over \$384,000 were student loans. She also disclosed numerous consumer debts. (GE 11 at 9-10, 21-35)

In her most recent bankruptcy. Applicant reported limited available assets in checking and savings accounts. (GE 11 at 13) She listed her gross monthly income as

\$5,241, with monthly take-home pay of \$4,110. (GE 11 at 39-40) Her listed monthly expenses totaled over \$5,300, a monthly deficit of over \$1,200. (GE 11 at 41-42) Applicant's most recent bankruptcy was discharged in August 2019. (GE 10)

Applicant has a history of purchasing expensive cars. In 2007, she purchased a luxury vehicle for about \$60,000. The car was in an accident in 2011. At the time, she owed about \$15,000 in car payments that she could not afford. (Tr. 69-71; GE 13 at 3)

In 2013, after her second bankruptcy discharge, Applicant purchased a used luxury vehicle for about \$41,000. The car was voluntarily repossessed in 2015 after she lost her job. She owed about \$19,000 in payments at the time. (Tr. 81- 83; GE 2 at 6, GE 4 at 7) In 2016 she replaced it with another used high-end vehicle costing about \$30,000. In 2019, before filing her most recent bankruptcy, she purchased another high-end automobile for about \$30,000. She has a \$767 monthly car payment. (Tr. 61, 101-103; GE 3 at 3)

Applicant also has several hundred thousand dollars in outstanding student loans. (GE 3 at 2) She estimated that about half of the student-loan amount was for her own education, and half was for her daughters' education. Applicant knows that student loan debt is not dischargeable in bankruptcy. She testified that repayment of those loans is currently deferred by the creditors because of the COVID-19 pandemic. (Tr. 104-108, 124-125)

Applicant believes that many of her financial issues occurred due to circumstances beyond her control, such as her difficult marriage, her job layoffs, and her drop in income. She wants to improve her credit and does not want to repeat her past financial mistakes. She is now more conscious of her budget and her spending. (Answer; Tr. 21-22, 138-139)

According to her work evaluations, Applicant exceeds job requirements in all respects. She has effective work relationships and makes positive contributions. She "goes out of her way to offer assistance and support to her co-workers." She demonstrates tact and consideration, and has a positive outlook and a pleasant manner. (AE L; AE M) She has received certificates of appreciation for her work at the State Department. (AE K)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "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).

The adjudicative 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 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.” Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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 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 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. . . .

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

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant has a long history of delinquent debt and financial instability. She has filed for bankruptcy under Chapter 7 three times, in 1996, 2011, and 2019. AG ¶¶ 19(a) and 19(c) 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;

(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, and there are clear indications that the problem is being resolved or is under control; and

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

AG ¶ 20(a) does not apply. Applicant has filed for Chapter 7 bankruptcy three times between 1996 and 2019, and her Chapter 13 petition, filed in 2018 (not alleged) was dismissed. Her financial issues are not isolated. They are also recent, as her most recent bankruptcy was filed only last year. While all three bankruptcies in the SOR were discharged, she has not established enough of a track record of financial stability to show that her financial issues are unlikely to recur and no longer cast doubt on her reliability, trustworthiness, and good judgment.

AG ¶ 20(b) has some application. Applicant's long career as a federal contractor has been interrupted at times by layoffs, when her employer lost the contracts that employed her. She also had a difficult marriage. These conditions were largely beyond Applicant's control, and they impacted her finances. The first prong of AG ¶ 20(b) applies.

For full effect, however, Applicant must also show that she acted responsibly under the circumstances. Applicant did not provide sufficient evidence to establish that. Her pursuit of higher education and providing the financial means for her two daughters are admirable, but she has long had several hundred thousand dollars in unresolved student loan debt that she has never put forth a serious effort to pay. She knows these debts are not dischargeable in bankruptcy, yet she provides no evidence of responsible action to resolve them. She also has a history of buying expensive cars that she cannot afford. The financial data she provided with her most recent bankruptcy petition shows that she remains underwater financially, despite renewed gainful employment. Applicant has not acted reasonably under the circumstances. AG ¶ 20(b) does not fully apply.

Applicant hired a debt relief company, participated in credit counseling in connection with filing bankruptcy, and testified to her renewed understanding of the need to keep to a budget. But even though the 2019 bankruptcy was discharged, she has yet to establish that her financial situation is truly resolved or is under control. AG ¶ 20(c) is not fully established.

The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant’s Chapter 7 bankruptcy discharge afforded her a fresh start, but this is no substitute for a track record of steady payments and financial stability. This is particularly so since she has discharged her debts in this fashion on multiple occasions, yet has taken few steps towards paying her other obligations responsibly or in establishing financial stability. AG ¶ 20(d) 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(c):

(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 Guideline F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant’s continued eligibility for a security clearance. Applicant did not mitigate the financial considerations 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: Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant continued eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge