



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00334
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2021

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. She did not meet her burden to mitigate the financial considerations concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 13, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to the SOR 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) on September 28, 2020. Applicant received the FORM on October 26, 2020. Applicant did not object to the Government’s evidence, and she provided no response

to the FORM. The Government's evidence, included in the FORM, and identified as Items 1 through 6, is admitted without objection. The case was assigned to me on January 14, 2020. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted all allegations with the exception of SOR 1.b, with no explanation. She is 31 years old. Applicant has never married, and does not have any children. After graduation from high school, she served on active duty in the U.S. Navy from 2007 until her honorable discharge in 2012. (Item 2). Applicant completed her most recent security clearance application in September 2017. She has worked for her current employer as an aircraft servicer since May 2019. (Item 2) Applicant held a security clearance while in the military. (Item 2)

Financial

The SOR ¶¶ 1.a-1.i alleged nine delinquent debts, consisting of overpayments by the U.S. Department of Veterans Affairs (VA), an automobile loan, consumer and medical accounts, all totaling \$25,814. Applicant attributes her financial problems to under employment and unemployment for several months in 2017 and for three months in 2019. In her security clearance application, she noted several short periods of unemployment and seeking assistance to "clean up her credit". However, she noted that she had not actually started with a counseling company due to not making the first payment for their services. (Item 6)

As to SOR ¶¶ 1.a-1.d, Applicant has medical collections accounts totaling \$2,271. She acknowledged that they became delinquent in 2019 due to catching up on other bills. (Item 6) In her subject interview she stated that she would contact the companies and start a payment plan. There is no documentation to support her claim.

As to SOR ¶¶ 1.e-1.g, Applicant acknowledges that they are VA overpayments – relating to a school loan and that Applicant used the money for personal expenses rather than tuition. She provided a payment plan for the VA accounts but has not provided proof of any payments. (Item 6) She thought tax return payments were going to her accounts. In her credit report (Item 5) there is proof that she made some payments, but has not made any recent payments. The issue is not resolved.

Applicant admits the debt in SOR 1.h for an account that is past due in the amount of \$523, with a loan balance of \$21,696. This is a for a car loan. She has not been able to make any car payments. (Item 6) Her credit report shows that the account is now in collection. (Item 5)

As to SOR 1.i, a charged-off account in the amount of \$1,271, she has not been able to make payments on this credit card. She stated that she tries to make a payment

when she can. She plans to contact the company and arrange a payment plan. She provided no documentary evidence to support this claim.

In Applicant's 2019 subject interview, she stated that she is willing to pay her debts and that this will not occur again. She will not buy another car as expensive as the one that she purchased. (Item 6) At that point she admitted that she had not received any financial counseling or sought debt consolidation.

There is no information in the file concerning Applicant's income or any evidence of a budget. She mentioned loss of income from a partner, but she did not elaborate. There are no character references. Applicant did not respond to the FORM to supplement the record with any mitigating information.

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 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 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."

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 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.

Section 7 of Exec. Or. 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* Exec. Or. 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 record and her credit reports, establish two disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”) and 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by 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;

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

Applicant admitted, and her credit reports confirm, that she is still indebted for the alleged SOR accounts. She has not received financial counseling and stated that she is willing to pay and make payment plan arrangements, but she has not provided any documentary evidence to receive mitigation. AG ¶ 20(a) is not applicable because she does not have her finances under control.

Applicant provided no credible nexus as to the short periods of unemployment and her inability to pay her debts. AG ¶ 20(b) partially applies, but she did not act responsibly under the circumstances.

Applicant's inaction regarding the debts precludes a conclusion that her finances are mitigated. She did not receive credit counseling. AG ¶ 20 (c) does not apply. She made some payment plan for the VA overpayments but has not provided proof of consistent or current payments. AG ¶ 20(d) partially applies. Due to the lack of evidence submitted by Applicant, it is impossible to conclude she made sufficient good-faith effort to resolve her debts or that her financial situation is under control.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant served in the U.S. military, receiving an honorable discharge in 2012. She obtained her high school diploma in 2012. She has had various jobs. She has been employed with her current employer since May 2019. The debts are from as far back as 2015. On balance, Applicant did not produce information sufficient to mitigate the security concerns about her finances.

Overall, the record evidence leaves me with some questions and doubts as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive 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, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a –1.i:	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 Applicant's eligibility for a security clearance. Continued eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge