



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



In the matter of:)
)
) ISCR Case No. 20-01063
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

April 16, 2021

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On August 10, 2020, in accordance with DoD Directive 5220.6, as amended (Directive), 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 with an undated Answer, and requested a hearing before an administrative judge. (Answer.) The case was originally assigned to another judge, and reassigned to me on January 20, 2021. The Defense Office of Hearings and Appeals (DOHA) had already issued a notice of hearing on December 22, 2020, scheduling the hearing for February 4, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 7, which were admitted into evidence. Applicant testified on her own behalf. The record was left open until April 2, 2021, for receipt of additional documentation. Applicant offered six packets of

documents, which I marked Applicant's Exhibits (AppXs) A through F. DOHA received the transcript of the hearing (TR) on February 17, 2021.

Findings of Fact

Applicant admitted all the allegations in SOR, except for ¶¶ 1.e, 1.f, 1.q, and 1.r. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 45-year-old employee of a defense contractor. She has held a security clearance since 2006. She is unmarried, and has no children. Applicant has a Master's in Business Administration. (TR at page 15 line 1 to page 17 line 12.)

She attributes her financial difficulties to "a [legal] dispute with . . . [a] contractor" over a remodel of a house Applicant purchased in 2012. (TR at page 18 lines 1~17.) Applicant testified as follows: "during this, paying the lawyer was very expensive. And I didn't know what to do. So, I kind of did one of the worst things possible was to try and gamble my way to get money for that." (TR at page 18 lines 13~17.) Prior to this legal dispute, Applicant admits to gambling about "every other month." (TR at page 19 lines 9~17.) After the legal dispute her gambling increased to "every other week . . . [her] paycheck . . . about \$2,200." (TR at page 19 line 25 to page 20 line 8.) Applicant "hit the rock bottom" and decided to file for the Bankruptcy (discussed below). This gambling pattern continued for "about a year," about five years prior to her hearing. (TR at page 21 lines 2~7.) Applicant still gambles between \$1,000~\$1,500, "every few months," the last time being in December of 2020, four months after the issuance of the SOR. (TR at page 21 line 14 to page 22 line 5.)

Guideline F - Financial Considerations

1.a. and 1.b. Applicant filed for the protection of a Chapter 13 Bankruptcy in February of 2016. She avers that she could not keep up with the monthly \$1,900 plan payments; and as such, "instead of gambling, I did another bad thing, which was Payday Loans." (TR at page 26 lines 18~23.) This first bankruptcy was dismissed in September of 2018 for failure to make the plan payments.

Applicant next withdrew funds from her "401K"; not realizing the tax consequences, which led to her second Chapter 13 Bankruptcy filing in October of 2018. In October of 1919, that petition was also dismissed for failure to make plan payments. (TR at page 27 line 1 to page 28 line 21.) These allegations are found against Applicant.

1.c. Applicant admits that she is indebted to the Federal government, as a result of 401K withdraws, in the amount of about \$12,995. After her hearing, Applicant set up a payment plan with the IRS, by which she will make monthly payments of \$300 towards this tax debt. (TR at page 28 line 21 to page 33 line 2.) This is evidenced by documentation. (AppX A.) As a result of this good-faith effort, this allegation is found for Applicant.

1.d. Applicant admits that she was indebted to the state government, as a result of 401K withdraws, in the amount of about \$9,030. After her hearing, Applicant set up a payment plan, by which she makes monthly payments of \$400 towards this tax debt. (TR at page 28 line 21 to page 33 line 2.) Her state tax debt has been reduced to \$6,949. This is evidence by documentation. (AppXs B and C.) As a result of this good-faith effort, this allegation is found for Applicant.

1.e. Applicant denies that she has a past-due debt as the result of an automobile loan in the amount of about \$3,900. She avers that this debt is “paid that off fully . . . and . . . [that she] gifted that car to . . . [her] nephew.” (TR at page 33 line 3 to page 34 line 24.) This averment is supported by documentation from “CARFAX”; and as such, this allegation is found for Applicant. (AppX D.)

1.f. Applicant denies that she has a past-due mortgage debt in the amount of about \$15,610. She avers that this debt “will be caught up . . . by the end of March.” (TR at page 35 line 1 to page 36 line 15.) This averment is supported by an April 1, 2021 credit report (CR) showing the mortgage debt is “in good standing”; and as such, this allegation is found for Applicant. (AppX F at page 34.)

1.g. Applicant admits that she was indebted to Creditor G for a past-due debt in the amount of about \$5,785. This debt is included in a debt-consolidation plan by which Applicant makes monthly payments of \$779.08. (TR at page 36 line 16 to page 40 line 4, and AppX E.) The current past-due amount is \$4,000. (AppX E at page 3.) This allegation is found for Applicant.

1.h. Applicant admits that she was indebted to Creditor H for a past-due credit-card debt in the amount of about \$1,000. Applicant avers that she is current with this creditor, which averment is supported by her April 1, 2021 CR. (TR at page 40 lines 5~15, and AppX F at pages 16~17.) This allegation is found for Applicant.

1.i. Applicant admits that she is indebted for interest on a past-due Payday Loan in the amount of about \$13,810. This debt is not included in Applicant’s debt consolidation plan, despite her averments to the contrary. (TR at page 40 line 17 to page 41 line 44, at page 52 lines 10~13, and AppX E at page 3.) This allegation is found against Applicant.

1.j. Applicant admits that she was indebted to Creditor J for a past-due debt in the amount of about \$1,058. This debt is included in a debt consolidation plan by which Applicant makes monthly payments of \$779.08. (TR at page 51 lines 17~21, at page 52 line 23 to page 53 line 4, and AppX E at page 3.) This allegation is found for Applicant.

1.k. Applicant admits that she was indebted to Creditor K for a past-due debt in the amount of about \$4,757. This debt is included in a debt consolidation plan by which Applicant makes monthly payments of \$779.08. (TR at page 42 line 1 to page 43 line 20, and AppX E at page 3.) This allegation is found for Applicant.

1.l. Applicant admits that she is indebted on a past-due Payday type loan in the amount of about \$4,007. This debt is not included in Applicant's debt consolidation plan, despite her averments to the contrary. (TR at page 43 lines 21~25, and AppX E at page 3.) This allegation is found against Applicant.

1.m. Applicant admits that she was indebted to Creditor M for a past-due debt in the amount of about \$9,506. This debt is included in a debt consolidation plan by which Applicant makes monthly payments of \$779.08. (TR at page 44 line 1 to page 45 line 22, and AppX E at page 3.) This allegation is found for Applicant.

1.n. Applicant admits that she was indebted to Creditor N for a past-due debt in the amount of about \$3,292. This debt is included in a debt consolidation plan by which Applicant makes monthly payments of \$779.08. (TR at page 45 line 24 to page 46 line 14, and AppX E at page 3.) This allegation is found for Applicant.

1.o. Applicant admits that she is indebted to Creditor O in the amount of about \$2,867. This debt is not included in Applicant's debt consolidation plan. (AppX E at page 3.) This allegation is found against Applicant.

1.p. Applicant admits that she is indebted on a past-due Payday type loan in the amount of about \$3,097. This debt is included in Applicant's debt consolidation plan. (TR at page 45 lines 15~21, and AppX E at page 3.) This allegation is found for Applicant.

1.q. Applicant denies that she is indebted to her bankruptcy attorney for a past-due debt in the amount of about \$1,000. As this debt does not appear on her or the Government's most recent credit reports, this allegation is found for Applicant. (TR at page 46 line 22 to page 47 line 6, GX 7 and AppX F.)

1.r. Applicant denies that she is indebted to her employer in the amount of about \$5,000 for improper use of her company's credit card. Applicant has successfully explained away this allegation; and as such, it is found for Applicant. (TR at page 47 line 7 to page 49 line 25.) This allegation is found for Applicant.

Policies

When evaluating an applicant's 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 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, administrative judges apply the guidelines 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. 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 applies for access to classified information seeks to enter 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 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 information.

Section 7 of Executive Order (EO) 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* 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.

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

- (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;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant has an obvious gambling problem. This, coupled with poor financial decisions such as unsuccessful bankruptcy filings, and taking out Payday type loans, only exacerbated Applicant's financial difficulties. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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;

(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;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems are ongoing. She has a long history of failed bankruptcies, and delinquencies. Although Applicant has addressed her tax delinquencies, she has just began a consolidation of her debts, but said consolidation does not appear to include all of Applicant's past-due debts. Applicant has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established.

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 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 eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c~1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.m and 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p~1.r:	For 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge