



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
) ISCR Case No. 20-01268
)
)
Applicant for Security Clearance)

Appearances

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

05/03/2021

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant accrued numerous delinquent or past-due debts due to events and circumstances beyond her control. She has acted responsibly to resolve her financial problems, which are unlikely to recur. Her request for continued access to classified information is granted.

Statement of the Case

On July 23, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew her eligibility for a security clearance required for her employment with a federal contractor and for her military reserve duties. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On September 23, 2020, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). I received the case on January 5, 2021, and convened the requested hearing on March 23, 2021. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on April 7, 2021. Applicant testified and presented Applicant Exhibits (AX) A – G. Department Counsel proffered Government Exhibits (GX) 1 – 7. With her Answer, Applicant provided documents that have been included in the record without objection. (Tr. 12 – 13)

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$48,070 for 5 delinquent or past-due debts (SOR 1.a – 1.e). In response, Applicant admitted SOR 1.a, 1.c, and 1.d. She denied the remaining allegations, and all of her responses were accompanied by explanatory remarks. (Answer) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 64 years old. She never married and has no children. She completed her undergraduate degree in 1980. She completed her latest security clearance application (SCA) on July 23, 2019. She has worked as an analyst in the defense industry since 1985 and has held a security clearance during that time. (GX 1) She has been employed by her current employer on a full-time basis since 2020. (Tr. 16)

Applicant was involuntarily separated from her job in November 2017, and she could not find another position until March 2018. That position, at a reduced salary of almost \$20,000, lasted until July 2018, with another decrease in pay. (AX C) Her only income, while she was unemployed consisted of whatever unemployment benefits she was receiving, which were not enough to pay her bills. (Tr. 40-41)

In Section 26 (Financial Record) of her most recent security clearance application, Applicant disclosed several delinquent or past-due debts, with explanations that she has been working to resolve issues, especially her home mortgage since 2017. (GX 1) There is no information in the file that she was interviewed as part of her background investigation. Applicant asserted that her financial problems stemmed from unemployment, unexpected home repairs, and an inability to pay all of her other bills. (Tr. 29) She elaborated that she has been working with creditors to bring all accounts current, especially the mortgage company. (SOR 1.a) However, she acknowledged that she had

some financial difficulties earlier (2008 and 2012), but she has resolved the issues. She did not ignore any creditors. She admits that taking out loans and refinancing was not the wisest thing to do, but she wanted to keep paying her bills and avoid bankruptcy. She was adamant in her testimony that “she has worked her way up” and has been in the field with a security clearance for 30 years. She had no one to help pay her bills. (Tr.)

As she stated at the hearing, she initially worked to resolve her financial problems with her mortgage through a debt management company, and presented information and correspondence from the mortgage company informing Applicant that they had not heard from the debt management company. (AX A-B) Applicant read articles on financial matters, but did not take an official course at this time. By 2020, after a few years, she realized that no progress was being made in paying off her debts or assisting with the mortgage issue. (SOR 1.a)

She then obtained the help and counsel of a non-profit local housing association who helps people with mortgage problems, especially in these challenging times, for no cost. Neither debt was alleged in the SOR, but Department Counsel introduced information about a debt that is relevant to an examination of Applicant’s actions in response to financial problems. Applicant has resolved the aforementioned accounts from earlier years. In addition, she was candid and credible in that she borrowed some money to pay bills and has paid the money to those she owed. (Tr. 45)

In response to the Government’s information, Applicant showed she has paid or otherwise resolved the debts by payment plans. She is also making monthly payments or has established a payment plan to resolve the remaining debts

The \$42,005 180 past-due amount for her home mortgage account at SOR 1.a arose when Applicant’s unemployment started in 2017. Applicant purchased a condo in 1991 for about \$96,500, and she made a down payment. At that time, she could afford her mortgage payment. (Tr. 79, 42, 51) Applicant’s last payment was in June 2019. This was from advice from the debt management company. (AX A-B) The balance on the mortgage is \$264,157, due to refinancing. It also appears from the credit report that there was a “balloon payment” of \$104,720. Applicant asked for several modifications, but she was denied. She was not allowed to make partial payments, and the full payments she made were returned to her. She was relying on the debt management company to deal with the mortgage company, but apparently they did nothing to follow up with requests from the mortgage company. (AX B) This resulted in a large waste of time and money for the Applicant. She acknowledged that she was in arrears at the time in 2017. The debt management company continued to advise her to continue to make requests for refinancing. (Tr. 10) At that time, she had a permanent job and wanted to pay her current monthly mortgage payment. The company would not accept any payments. Applicant did not want to file for bankruptcy. The debt management company advised her by not paying they could get a special waiver for foreclosure. (AX B) The home did not go to foreclosure. The non-profit is still assisting the Applicant by working with the mortgage company and

to negotiate a settlement so that she can pay her monthly mortgage and an amount on the arrearages. (Tr.85)

SOR 1.b alleges a second mortgage account that is 180 days past due in the approximate amount of \$2,262, with a total balance of \$14,995. (Tr. 33) Applicant worked with the creditor and provided a temporary payment arrangement which started in January 2021. The monthly payment is \$155. The recent account history shows a principal balance of \$10,883. (AX G) She is current on this plan.

SOR 1.c alleges a collection account in the approximate amount of \$1,326. Applicant was not aware of this account, but when she contacted the company she learned it was purchased from another bank. She did not recall the account, but she set up payments to close the account. The account will be paid off in March 2021. (tr. 61)

SOR 1.d alleges a charged-off account in the approximate amount of \$773. Applicant submitted information that she was paying \$67.58 monthly. The credit bureau report confirms that the account is current, with zero balance. Her last payment was in December 2020.

SOR 1.e alleges a 2019 judgment in the approximate amount of \$1,704. The account is current. (AX D, GX 4)

Applicant is now actively working with the non-profit housing assistance group to negotiate the resolve the home mortgage in SOR 1.a, (Tr. 81) Her current salary is \$86,700, and she has a small monthly pension of \$97. (Tr.44) She has a retirement account with about \$10,000. Her checking account has money in it (\$8,000), and she is able to make her monthly mortgage payment of \$1,600, if allowed. Applicant is current on her 2012 car loan, which will end next year. (Tr. 46) When asked about her income taxes, she answered that she is on an installment plan with the IRS paying \$154 a month. Her tax return was completed by someone other than herself. (Tr. 77)

When questioned by the Government, Applicant responded "No" to all questions regarding any vacations, large purchase items, or extravagant items. (Tr. 50) Applicant acknowledged that the condo was built in 1975, and over the years she has had many expensive repairs as well an increasing condominium fee. She has plumbing problems and a furnace issue. When a large ticket item arose, she took out a second mortgage or a loan. (Tr. 56) She now realizes that was probably not the best solution. She was naïve and wanted to maintain her condo and make all necessary repairs. She was young and not educated in financial matters. She was quite candid and stated that she did not make a substantial amount of money until later in her career. However, she did the best she could to maintain her home and pay bills. She also did not realize that some of the interest rates for a loan were as high as 20%.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; AG ¶ 2(b))

Analysis

Financial Considerations

The Government established that Applicant incurred numerous delinquent or past-due debts in 2008, 2012, and 2017. The largest debt is her home mortgage which is now 180 days late with a balance of more than \$46,000. This information reasonably raises a security concern about Applicant's finances that is articulated, in relevant part, at 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant presented some important mitigating information. The Government acknowledged that the account in SOR 1.-1.e, although in collection status, are current with Applicant's payment plans or are resolved. The debts listed on the SOR resulted from unemployment or underemployment. She had several intermittent contract positions, but did not find consistent full-time employment until 2020. Applicant started to address her debts through a debt management company; however, she did not see results from that effort. She is now working with a non-profit housing group that helps people with mortgage problems. She has tried to modify her mortgage loans and was advised by the debt management company not to pay. Applicant stands ready to pay here monthly \$1,600 mortgage payment, but the company will not accept the amount due to arrearages.

Applicant's efforts to address her debts occurred before the SOR. As she finally found steady work, she began contacting creditors. Her initial efforts with the debt management company were hindered by the ineffectiveness of the company. She acknowledged other earlier debts in 2008 and 2012 (not alleged in the SOR) that she has paid. Was Applicant acting in a reasonable manner in this situation? A component is whether she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Her earlier credit reports confirm that she has resolved or is now repaying most of her

debts, and she is still working with the home mortgage. She meets all of her current obligations in addition to repaying her past-due debts. All of the foregoing supports application of the following AG ¶ 20 mitigating conditions.

(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; and

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

Applicant's financial problems are not the result of poor financial management or other misconduct. She has acted responsibly given the circumstances in which she found herself, and it is likely she will resolve her remaining debts. The security concerns under this guideline are mitigated. I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). In addition to Applicant's long career in the defense industry, her history of holding a security clearance and earlier credit reports support the position that she has "paid as agreed." Her efforts to resolve her debts despite limited resources and unforeseen events, speaks well of her judgement and reliability. Applicant is not required to be debt-free nor to develop a plan for paying all debts immediately or simultaneously. She has evidenced a serious intent to resolve her mortgage. A fair and commonsense assessment of all of the record as a whole shows the concerns in the SOR are mitigated.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a – 1.e: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to continue access to classified information. Applicant's request for a security clearance is granted.

Noreen a. Lynch
Administrative Judge