



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01846
)
)
Applicant for Security Clearance)

Appearances

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

June 7, 2021

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On October 27, 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 soon thereafter, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 26, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 27, 2021, scheduling the hearing for February 24, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 4, which were admitted into evidence, without objection. Applicant testified on her own behalf. Applicant offered seven documents, which I marked Applicant’s Exhibits (AppXs) A through G, and were admitted into evidence. The record was left open until April 23, 2021, for receipt of

additional documentation. On April 23, 2021, Applicant offered nine documents, which I marked as AppXs H through P, and were admitted into evidence. DOHA received the transcript of the hearing (TR) on March 5, 2021.

Findings of Fact

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

Applicant is a 36-year-old employee of a defense contractor. She has been employed with the defense contractor since February of 2020. She currently does not hold a security clearance. Since November of 2018, she has been pending divorce from her spendthrift husband. She has one child. (TR at page 20 line 15 to page 29 line 3.) She attributes her current financial situation her husband's deleterious spending ways. In addition, he also lost his job in 2017. (*Id* and TR at page 30 lines 10~13.)

Guideline F - Financial Considerations

1.a. Applicant admits that she had a past-due debt for about \$13,741 to Creditor A, as the result of the repossession of one of her husband's many motor vehicles. (TR at page 29 line 11 to page 32 line 25.) This debt has been cancelled by Creditor A, as evidenced by an Internal Revenue Service (IRS) Form 1099-C. (AppX F.) This allegation is found for Applicant.

1.b. Applicant admits that she had a past-due debt for about \$12,510 to Creditor B, as the result of the repossession of another one of her husband's many motor vehicles. (TR at page 33 line 1 to page 35 line 4.) This debt has been cancelled by Creditor B, as evidenced by an IRS Form 1099-C. (AppX G.) This allegation is found for Applicant.

1.c. Applicant admits that she had a past-due debt for about \$7,961 to Creditor C, as the result of the repossession of another one of her husband's many motor vehicles. (TR at page 35 line 18 to page 39 line 8.) This debt was settled for \$800, of which Applicant has already paid \$600, as evidenced by documentation from a successor creditor to this debt. (AppX D.) This allegation is found for Applicant.

1.d. Applicant admits that she has a past-due debt for about \$5,900 to Creditor D, as the result of the repossession of another one of her husband's many motor vehicles. (TR at page 37 line 5 to page 39 line 8.) This vehicle was acquired by her estranged husband just prior to the divorce filing, and Applicant is making a good-faith effort to address this past-due debt. This allegation is found for Applicant.

1.e. Applicant admits that she had a past-due debt for about \$3,261 to Creditor E. (TR at page 39 line 10 to page 40 line 7.) This debt "is paid in full," as evidenced by documentation from a successor creditor to this debt. (AppX M.) This allegation is found for Applicant.

1.f. Applicant admits that she had a past-due debt for about \$3,023 to Creditor F. (TR at page 40 lines 9~20.) She is making monthly payments of \$302, with a reduced balance due of \$1,209, as evidenced by documentation from Creditor F. (AppX C.) This allegation is found for Applicant.

1.g. Applicant admits that she has a past-due debt for about \$2,633 to Creditor G, as the result of cosigning for one of her estranged husband's credit cards. (TR at page 40 line 21 to page 41 line 15.) I find that Applicant is making a good-faith effort to address this past-due debt. This allegation is found for Applicant.

1.h. Applicant admits that she had a past-due debt for about \$2,164 to Creditor H. (TR at page 41 line 16 to page 42 line 10.) This debt has a "\$0.00" balance, as evidenced by documentation from a successor creditor to this debt. (AppX H.) This allegation is found for Applicant.

1.i. Applicant admits that she had a past-due medical debt for about \$850 to Creditor I. (TR at page 40 lines 9~20.) She has paid of \$595 towards this debt, with reduced balance due of \$397, as evidenced by Applicant's banking records. (AppX I.) This allegation is found for Applicant.

1.j. Applicant denies that she had a past-due medical debt for about \$735 to Creditor J. (TR at page 44 line 4 to page 45 line 14.) She avers, credibly, that this medical debt has been paid by her health insurance, and it does not appear on the Government's most recent January 2021 credit report. (GX 4.) This allegation is found for Applicant.

1.k. Applicant admits that she had a past-due medical debt for about \$698 to Creditor K. (TR at page 45 lines 15~23.) She has paid \$116 towards this debt, as evidenced by documentation from Creditor K. (AppX I.) I find that Applicant is making a good-faith effort to address this past-due debt. This allegation is found for Applicant.

1.l. Applicant admits that she had a past-due debt for about \$580 to Creditor L. (TR at page 45 line 24 to page 46 line 23.) This debt has a "\$0.00" balance, as evidenced by documentation from Creditor L. (AppX J.) This allegation is found for Applicant.

1.m. Applicant admits that she had a past-due debt for about \$346 to Creditor M. (TR at page 46 line 24 to page 47 line 12.) She has made two payments of \$173 towards this debt, with reduced balance due of zero, as evidenced by Applicant's banking records. (AppX K.) This allegation is found for Applicant.

1.n. Applicant admits that she had a past-due debt for about \$329 to Creditor N. (TR at page 47 lines 13~21.) She is making monthly payments of \$60 towards this debt, as evidenced by documentation from Creditor N. (AppX A.) This allegation is found for Applicant.

1.o. Applicant admits that she had a past-due debt for about \$242 to Creditor O. (TR at page 47 line 23 to page 48 line 25.) She has made a payment of \$242 towards this debt in November of 2020, with reduced balance due of zero, as evidenced by Applicant's banking records. (AppX L.) This allegation is found for Applicant.

1.p.. 1.r. and 1.s. Applicant admits that she had past-due medical debts totaling about \$387 to Creditor P. (TR at page 49 lines 1~19.) This account is no longer past due, as evidenced by Applicant's banking records. (AppX E.) This allegation is found for Applicant.

1.q. Applicant admits that she had a past-due debt for about \$124 to Creditor Q. (TR at page 49 line 20 to page 50 line 5.) She has made a payment of \$124 towards this debt in November of 2020, with reduced balance due of zero, as evidenced by Applicant's banking records. (AppX L.) 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. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had significant past-due indebtedness. 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;

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

(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.

Much of Applicant's financial problems can be attributed to her estranged husband. He has a long history of delinquencies. She is now addressing or has addressed all of the alleged past-due debts. Financial Considerations is found for Applicant.

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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected in the workplace. She performs well at her job. (AppXs O and P.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

Subparagraphs 1.a. through 1.s.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge