



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01029
)
)
Applicant for Security Clearance)

Appearances

For Government: Mora Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2021

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 4, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On August 6, 2020, Applicant answered the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 22, 2021. The evidence

included in the FORM is identified as Items 3-6 (Items 1-2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on April 28, 2021. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response and several attachments, which are marked to correspond with the SOR paragraph number they refer to. I have marked these documents collectively as Applicant exhibit (AE) A. She did not object to the Government's documents, nor did Department Counsel object to AE A (Department Counsel's June 3, 2021 transmittal letter is marked as administrative exhibit (ADE) I). All exhibits are admitted into evidence. The case was assigned to me on July 9, 2021.

Findings of Fact

Applicant admitted seven of the SOR allegations, with explanations (SOR ¶¶ 1.a-1.d, 1.f, 1.h-1.i), and denied two allegations (SOR ¶¶ 1.e, 1.g). The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 43 years old. She has worked for a federal contractor since November 2018. She had a period of unemployment from May 2018 to November 2018. She served on active duty in the U.S. Navy from 1996 to 2002, and was honorably discharged. She then served in her state Army National Guard from 2003 until May 2018, when she was medically retired with an honorable discharge. She received her associate's degree in 2015. She is twice divorced, but remarried her second husband in February 2018 and remains married to him. She has four children, ages 21, 20, 19, and 8. (Items 2, 3)

The remaining eight delinquent SOR debts total approximately \$29,912 (Department Counsel withdrew SOR ¶ 1.e in her FORM submission and it will no longer be considered). Applicant's debts are established by credit reports from February 2020 and February 2019, her security clearance application (SCA) admissions, her admissions to a defense investigator in May 2019, and her SOR admissions. (Items 2-6)

Applicant attributes her financial problems to her husband losing his job in 2013, leaving her to be the family's sole income earner and having to support four children. She intends to pay her debts. (Item 3; AE C) The status of the SOR debts is as follows:

SOR ¶ 1.a-\$16,475 charge off. This is an auto account opened in September 2011 and was charged off in December 2013. In her SOR answer, Applicant admitted this account and claimed she would clear up this debt in the future with a payment arrangement. More recently, she admitted that she has yet to contact the creditor. This debt is unresolved. (Item 2, 5; AE A)

SOR ¶ 1.b-\$316 charge off. This is a utility account opened in April 2013, which went delinquent in June 2015. Applicant admitted this account and claimed she has made several attempts to contact the creditor without success. She will continue to make efforts to resolve this debt. This debt is unresolved. (Items 2, 5; AE A)

SOR ¶ 1.c-\$310 collection. This is a utility account opened in October 2018. Applicant admitted this account and documented payment in May 2021. This debt is resolved. (Item 2, 6; AE A)

SOR ¶ 1.d-\$7,785 charge off. This is a vehicle account opened in June 2011, which was charged off in August 2013. In her SOR answer, Applicant admitted this account and claimed she would clear up this debt in the future with a payment arrangement. More recently, she stated she had a number for the creditor and would make payment arrangements beginning in August 2021. She failed to provide any documentation corroborating her claims. This debt is unresolved. (Item 2, 5, AE A)

SOR ¶ 1.e-\$2,224 collection. This allegation was withdrawn by Department Counsel and is no longer in dispute.

SOR ¶ 1.f-\$2,111 collection. This is an account with a financial institution that had its last activity in November 2011 and was assigned to a collection service in September 2013. Applicant admitted this debt, and in her SOR answer stated that she would make payment arrangements beginning in September 2020. There is no supporting documentation that she made such payment arrangements at that time. More recently, Applicant provided documentation showing that she reached a settlement on this debt, whereby she was to make a payment in May 2021 of approximately \$844 and a second payment in June 2021 for the same amount. She did not provide documentation showing that either of the payments were made. This debt is unresolved. (Items 2, 5; AE A)

SOR ¶ 1.g-\$1,348 collection. This is an account with a loan company that had its last activity in November 2012 and was assigned to a collection service in September 2013. Applicant denied this debt, claiming she was the victim of identity theft. She provided no documentation supporting this claim. Now she states that she will pay this debt when she completes the settlement for SOR ¶ 1.f. This debt is unresolved. (Items 2, 5; AE A)

SOR ¶¶ 1.h and 1.i-\$939; \$628 collections. These two consumer accounts are for the same creditor. Applicant presented documentation that both accounts were closed in May 2021. These accounts are resolved. (Item 2; AE A)

Applicant presented a copy of a May 24, 2021 credit report that she offered as proof that she has a good payment history. She hopes to have all her debts cleared up by the end of 2022. She did not offer any monthly budgetary information or proof that she sought financial counseling. (AE A).

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 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, these guidelines are applied 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." 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. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has approximately \$29,000 of delinquent debt. With the exception of recently paying one of the smaller debts (\$310) and having two debts closed (\$939; \$628), the larger debts remain unaddressed by her. She showed that a settlement for one debt was reached (SOR ¶ 1.f), but she failed to document that she made the settlement payments. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; 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.

Applicant has a history of financial difficulties. The SOR debts are recent and all but three small debts remain unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. While Applicant dealt with financial conditions beyond her control (her husband's unemployment, requiring her to be the sole wage earner for her family), I find she has not acted responsibly in trying to resolve her debts. Her efforts to resolve three small SOR debts are commendable, but insufficient to conclude that her overall financial problems are being resolved or are under control. Likewise, she has failed to establish a good-faith effort to resolve her remaining delinquent debts. There is no evidence Applicant used a financial counselor. AG ¶¶ 20(b), 20(c), and 20(d) do not apply, except to SOR ¶¶ 1.c, 1.h-1.i. She failed to produce documentation to support her dispute of SOR ¶ 1.g. AG ¶ 20(e) 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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, including her military service and her husband's unemployment. However, I have also considered her insufficient efforts to address her delinquent SOR debts. Applicant has not established a track record of financial stability.

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 security concerns arising under Guideline F, financial considerations.

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.b; 1.d, 1.f – 1.g:	Against Applicant
Subparagraph 1.e:	Withdrawn
Subparagraphs 1.c, 1.h – 1.i:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge