



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 19-03815
)
)
Applicant for Security Clearance)

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2021

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

Statement of the Case

On September 17, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). Applicant answered the SOR in writing and requested her case be decided by an administrative judge on the written record without a hearing (Answer). On March 2, 2021, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant and received by her on March 15, 2021. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted a letter and two documents that I marked as Exhibit (Ex.) 1, Ex. 2 and, Ex. 3 (Response). Department Counsel had no objections to those exhibits and they are admitted into the record.

Applicant had no objections to the Government's evidence. Items 1 through 9 are admitted into evidence. DOHA assigned the case to me on May 17, 2021.

Findings of Fact

Applicant admitted the four financial allegations contained in the SOR. She provided some explanations. (Item 2)

Applicant is 51 years old, married, and has two adult children. She served in the National Guard from 1986 to 2001 and 2007 to 2013. She attended college between 2001 and 2005. She earned a bachelor's degree in 2005. She has worked for a defense contractor since 1987. (Item 3)

In August 2007, DOHA denied Applicant a security clearance under the financial considerations guideline based on her delinquent debts, primarily student loans. In March 2008, DOHA determined that she mitigated the concerns and granted her a secret clearance. It found that personal circumstances contributed to her financial problems and that she intended to resolve her loans. She initially received a security clearance in 1995. (Item 9)

In November 2017, Applicant submitted a security clearance application (SCA). In it, she disclosed that she had not filed her 2016 Federal and state income tax returns. She estimated that she owed about \$2,000 in unpaid taxes. She also disclosed that her salary had been garnished for the past year for delinquent student loans. She estimated that the loans totaled about \$3,000 and became due in July 2005. (Item 3) During her February 2019 background interview, Applicant told the investigator that she had not filed her 2016 or 2017 Federal or state tax returns and intended to file them with her 2018 returns in March 2019. (Item 8)

Based on credit bureau reports (CBRs) from May 2019, December 2017, and August 2007, the September 2020 SOR alleged four financial security concerns. (Items 4, 5, 6, and 7) The status of each allegation is as follows:

(SOR ¶¶ 1.a and 1.b) The SOR alleged that as of May 2019, Applicant's delinquent student loans, \$28,489 and \$27,744, totaled \$56,233. They started becoming delinquent after she graduated from college. (Items 5 and 7) In her Answer to the SOR, she stated that she was paying those loans through a garnishment. (Item 2) She thought the garnishments started in 2016. (Item 8)

In her April 2021 Response to the FORM, Applicant stated that she voluntarily started a \$249 monthly repayment plan on December 28, 2020, for her student loans. The creditor recorded the loan total as \$51,693 at that time. She stated that the loans had been in forbearance due to COVID pandemic, but she decided to begin paying them. (Item 4; Exs. 1 and 2) She did not submit proof that she made any payments since initiating the December 2020 plan or that they were being resolved. These student loans are unresolved.

(SOR ¶ 1.c) Applicant failed to timely file her 2016 and 2017 Federal income tax returns. She asserted that she filed her 2016 Federal return in July 2020. She submitted a copy of the return that was signed on July 15, 2020, by her and her accountant. The return estimated a tax due of \$1,736. (Item 2) There is no proof from the IRS that she filed that return or her 2017 Federal tax return. This allegation is unresolved.

(SOR ¶ 1.d) Applicant failed to timely file her 2016 and 2017 state income tax returns. In her Answer, she said she intended to file her 2017 returns in October 2020. (Item 2) She did not submit proof that she filed either of these state returns. This allegation is unresolved.

Applicant attributed her financial problems to marital problems with her husband who was spending her money carelessly. She said she was trying to stabilize her finances and pay her debts. She and her husband sold their townhouse to help address their debts. She stated that she filed all outstanding tax returns, but did not submit proof for any of the returns. (Items 2; Ex. 1)

Applicant submitted a 2020 performance evaluation. She received an overall “High Performance” rating. (Ex. 3) Her employer noted that she is competent, reliable and an exceptional employee. (Ex. 3)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an “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 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 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 10865 provides that an adverse decision 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 Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

Failure or inability 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 information. Financial distress can also be caused by 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 acts to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. The following are potentially applicable in this case:

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

Applicant has a history of not meeting financial obligations, particularly her student loans, as documented by a previous security clearance case involving the same issue. She also failed to timely file her 2016 and 2017 Federal and state income tax returns. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out five conditions that could potentially mitigate financial security concerns in this case:

- (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, or a death, divorce or separation), 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
- (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 has a history of student loan and tax problems that is ongoing and casts doubt on her reliability and good judgement. There is insufficient evidence to establish mitigation under AG ¶ 20(a). Applicant attributed her financial problems to her husband's irresponsible use of her money. While that may have been a circumstance beyond her

control, she did not provide sufficient evidence that she acted responsibly in addressing her financial obligations. She failed to establish mitigation under AG ¶ 20(b).

There is no evidence that Applicant received credit counseling or that her finances, student loans, or taxes are under control. She did not submit evidence to document her compliance with the current settlement arrangement she asserted she has with her student loan creditor. She did not demonstrate a good-faith effort to manage those student loans given their age and her past security clearance issues related to them in 2007. She did not provide credible proof that she filed all outstanding tax returns. She did not establish mitigation under AG ¶¶ 20 (c), (d), or (g).

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) 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.

AG ¶ 2(c) requires the ultimate determination of whether to grant national security eligibility include 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 that guideline, but some warrant additional comment.

Applicant is a 51-year-old woman, who served in the Army for 20 years and has successfully worked for a defense contractor since 1987. Her employer gave her a high rating for 2020. Nonetheless, her delinquent student loans have raised security concerns for the second time. Despite telling an investigator in January 2019 that she intended to file her 2016 and 2017 tax returns with her 2018 returns in March 2019, there is insufficient evidence to conclude that she has done so. At this time, the status of her 2016 through 2020 returns is unknown. There is no information to show that she does not owe Federal or state taxes related to those returns. The record evidence leaves me with serious doubts about Applicant's judgment, reliability, and suitability for a security clearance. Applicant

failed to mitigate the security concerns arising under the financial considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through 1.d: 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 a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge