



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



In the matter of:)
)
) ISCR Case No. 20-03575
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On February 15, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant's answered the SOR on February 17, 2021, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on May 11,

2021. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on August 23, 2021.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.e and denied the allegation in ¶ 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. She earned a bachelor's degree in 2002 and master's degree in 2011. She married in 2014 and is separated from her spouse. She has two adult stepchildren. Applicant was unemployed from January 2010 to October 2010. She has worked for the same federal contractor since October 2010. (GE 3, GE 4)

The SOR alleges five delinquent debts totaling approximately \$25,252. In her February 2020 security clearance application (SCA), she disclosed the charged off delinquent debt alleged in SOR ¶ 1.a (\$16,332), a repossessed vehicle, and a past due credit card debt that was not alleged (\$224). Applicant did not disclose the four remaining SOR credit card debts: ¶ 1.b-\$4,947; ¶ 1.c \$2,089; ¶ 1.d-\$784; and ¶ 1.e-\$1,101. Applicant's admissions and credit reports from June 2020 and May 2021 corroborate the delinquent debts alleged.

In June 2020, Applicant was interviewed by a government investigator as part of her background investigation. She told the investigator that she had been financially irresponsible in the past, but had gotten her finances under control. She is focused on saving instead of spending and is looking into investing in the stock market. She explained that most of her accounts became delinquent around December 2016 because at her old position she was traveling overseas and collecting per diem, so she had more money. At her new position, she did not travel so did not earn as much money. Applicant further explained that in order for her to maintain her current financial stability she cannot take on additional financial obligations. She stated she was willing to contact some of the creditors and find out if they would be willing to work with her on payment plans, but she cannot make substantial payments. (GE 4)

Applicant's vehicle was repossessed (SOR ¶1.a) and her account closed in 2018. She has not resolved the account. She told the investigator that she intended to contact the creditor to satisfy the account. She has been monitoring her credit report to see who owns the account because it is now charged off. This debt is not resolved. (GE 4)

Applicant did not disclose the credit card debt in SOR ¶ 1.b. on her SCA. When confronted with it by the government investigator, she explained this account was used in 2015 to purchase an Apple computer and an Apple tablet. It became delinquent in 2017. She explained she did not disclose the account on her SCA because she forgot

about it and has not heard from the creditor since it was charged off. She has made no effort to pay the debt. By the time her finances started to improve the account was charged off, so she never attempted to contact the creditor. She stated she could attempt to contact the creditor to set up a payment plan. This debt is not resolved.

The credit card debt in SOR ¶ 1.c became delinquent in 2017. She did not disclose the account because the account was closed, and she did not think she needed to list it. The creditor contacted her when the account became delinquent in 2017, but she could not pay the debt in full so she stopped making payments. Since then she has never tried to satisfy the debt because the creditor did not contact her again. This debt is not resolved.

The creditor for the debt in SOR ¶ 1.d contacted Applicant after the account became delinquent. She could not make the payments required, so Applicant stopped making payments. She did not attempt to satisfy the debt or contact the company again. She did not disclose the account in her SCA. The debt is not resolved.

The charged off debt in SOR ¶ 1.e is for a credit card. The account became delinquent in 2017. The creditor contacted her regarding paying her account, but she was unable to pay it. She stated she forgot about the account, so did not disclose it on her SCA. The debt is unresolved.

When confronted with the debts by a government investigator in June 2020 during her background interview, Applicant acknowledged she owed the debts, but said she forgot about some accounts, so she did not disclose them. Others were closed so she did not think she had to disclose them. Section 26 of the SCA requires disclosure of delinquencies within the past seven years for an “account or credit card suspended, charged off, or cancelled for failing to pay as agreed.” Applicant admitted to the government investigator that after she lost her travel per diem she defaulted on several credit cards because of it. Creditors had contacted her and because she could not pay, she stopped making payments. She was aware that she had more than the two delinquent debts she disclosed. I did not find her statements to the investigator credible that she merely forgot to include these significant debts or that she did not think she had to disclose them because the accounts had been closed. I find Applicant deliberately failed to disclose her delinquent debts.

Policies

When evaluating an applicant’s suitability for 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 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(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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has five delinquent debts totaling approximately \$25,252 that began accumulating in approximately 2017 and remain unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and

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

Applicant admitted owing all of the debts in the SOR. She attributed his financial problems to her job changing and she was no longer collecting per diem from travel, so she stopped paying the debts. Creditors have contacted her, but she has been unable to make payments. In 2018, her car was repossessed. She has made no effort to resolve any debts or contact the creditors. Her debts are recent and ongoing. Her failure to address any of her delinquent debts cast doubt on her reliability and judgment. AG ¶ 20(a) does not apply.

Applicant attributes her financial difficulties to the nature of her job changing and she no longer was collecting per diem. I find this circumstance was marginally beyond her control. Although she relied on the per diem, it is not included as income, but it is meant to reimburse her for travel expenses. I considered that she relied on it to supplement her income, even though this was not fiscally responsible behavior. Applicant has not done anything to resolve her debts. She failed to act responsibly under the circumstances. AG ¶ 20(b) has minimal application.

There is no evidence Applicant has had financial counseling or that her financial problems are resolved or under control. There is no evidence she has made any good-faith payments to resolve her delinquent debts. AG ¶¶ 20(c) and 20(d) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to any employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant was aware when she completed her SCA that because she was no longer collecting per diem, she was unable to pay many of her credit cards. She was contacted by creditors, but advised them she was unable to pay her debts and could not afford the payment plans proposed. She disclosed her repossessed vehicle and an unalleged debt, but did not disclose four credit cards debts. I do not find it credible that she forgot the debts or that she did not think she had to disclose her delinquent accounts because they were closed. The SCA is clear on the type of accounts to be disclosed, including charged-off credit cards and suspended accounts. I find Applicant deliberately failed to disclose all of her delinquent accounts in her SCA.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

Applicant did not correct her omission until she was confronted with the accounts during her background interview. She did not make a prompt good-faith effort to correct the omissions. Deliberately failing to be honest in a SCA is not a minor concern?. Her actions cast doubt on her reliability, trustworthiness, and good judgment. The above mitigating conditions do 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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant failed to meet her burden of persuasion. She did not provide evidence to conclude she has established a track record of being fiscally responsible or addressing her financial obligations. 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 raised under Guideline F, financial considerations and Guideline E, personal conduct.

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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.e: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | 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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge