



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



In the matter of:)
)
) ISCR Case No. 20-01163
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

11/24/2021

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On October 16, 2020, in accordance with Department of Defense (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 Guidelines F and E. 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 and requested a hearing before an administrative judge. (Answer) The case was assigned to me on July 3, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 10, 2021, scheduling the hearing for November 4, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on her own behalf. She did not submit any documents at the

hearing. She stated that she had some documents, but they were lost in her travel baggage. (Tr. 22) I kept the record open, but Applicant did not submit any documentation. DOHA received the transcript of the hearing (Tr.) on November 17, 2021.

Findings of Fact

Applicant, age 29, is not married and has no children. (Tr. 18) She obtained her undergraduate degree in 2014. She reports no military service. Applicant completed her security clearance application on April 26, 2019. (GE 1) She is being sponsored for a security clearance. She has been unemployed since April 2019. (GE 2) She has never held a security clearance.

FINANCIAL

The SOR alleges in SOR ¶¶ 1.a -1.l that Applicant has 12 student loan debts placed in collection in the approximate amount of \$38,000, and one consumer collection account in the amount of \$160. (SOR¶ 1.m) Applicant admitted all the student loan debts, but denied 1.m as she has no idea what the account represents. (Answer to SOR) The student loans are from 2010 to 2014. (Tr. 24)

Applicant attributes her inability to pay her student loans to low paying jobs, helping her siblings pay their tuition, and helping her mother who had a stroke. She believes that she made some small payments in 2017 or 2018, and she believed she received a phone call that her student loans were deferred. (Tr. 25) She thought the payments were \$25 a month. (Tr. 26) She added that the money was being deducted from her checking account. Applicant stated that she could not get statements from her bank to substantiate the payments. (Tr. 27) However, she insisted that the loans were kept in deferment indefinitely because she could not pay. (Tr.30) She believes that she talked to the Department of Education about six months ago and was told to call back when she could pay.

She worked in the state where her mother lived and moved to another state to find work. She found a part-time job during the holidays. (Tr. 28) She stated that she never made more than \$40,000. She was not clear when that was. At one point she thought that maybe she was paying money to a scammer. (Tr. 36)

In 2019, Applicant secured a full time job for one year, but she claims that she was still not making enough money to pay anything on the student loans. (Tr. 38) She is firm in her belief that she never received any paper work from the Department of Education. She stated that they always called her. She has no idea how much she has paid on the student loans in the past seven years. She admitted that she had another full time job from 2016 to 2017, but made no payments on the student loans. She believes her hourly wages varied from \$13 to \$16 to perhaps \$30.

Applicant wants to pay her student loans and interviews often. However, the money she earns goes to financially helping her mother. Applicant travels between states. She acknowledged that before COVID, she has not made any efforts to pay. (Tr. 47)

When asked specifically where does her money go, Applicant responded for her car payment, and rent to her mother, and car insurance. She borrows money from family. (Tr. 50) She has no real savings. (Tr. 52) Applicant received some unemployment benefits and some COVID stimulus money.

Personal Conduct.

As to SOR ¶ 2.a, on Applicant's SF-86 dated April 2019, she responded "NO" to Section 26 Financial Record Delinquencies in the past seven years did she have any bills turned over to a collection agency. Applicant admitted she knew she had debt and had discussed it with her investigator. (GE 2) Applicant answered "YES" to having debt in her answer to the SOR. However, at the hearing she attributed the non-disclosure to lack of knowledge about the security clearance application. She did not think the Government cared about finances. (Tr. 52)

As to SOR ¶ 2.b, when Applicant completed her April 2019, SF-86 in response to Section 13A – Employment Activities she answered "NO" to whether she had ever been fired or terminated in the past seven years. By answering "No", she falsified her answer to the SF-86. She was terminated in March 2018 for failure to follow company policy..(GE 2) At the hearing, Applicant blamed the action on the company and said she was going to quit. (Tr. 55)

As to SOR ¶ 2.c, Applicant falsified material facts on her SF 85-6 in April 2019, when she answered "NO" to Section 13A, in the past seven years have you been officially reprimanded, suspended, or received written warnings in 2017, 2018, (3), written counseling in 2018, letter of suspension, letter of reprimand and two written warnings in 2018. Applicant agreed to the 2017, 2018 2019, terminations and various warnings during her subject interview in 2019. (GE 2) However in her answer to the SOR, she blamed the various companies because she felt attacked and pressured. At the hearing, she admitted that she should have answered "yes." (Tr. 57)

As to SOR ¶ 2.d, Applicant falsified material facts on her April 2019 SF-86 by answering "NO" to Section 13A – Employment Activities, when she failed to disclose that she was terminated in December 2015. In her subject interview she admitted that she was fired but disagreed with the reason. (GE 2)

As to SOR ¶ 2.e, Applicant falsified material facts on her April 2019 SF-86 in Response to Section 13- Employment Activities, because she answered "NO" and she was terminated in August 2013 for failure to follow company policy. She admitted this in her subject interview. (GE 2)

As to ¶ 2.f, Applicant denied falsifying any documents or receiving a written counseling. The counseling was for leaving early from work. However, she stated that he tore it up and checked the cameras. She was credible in that she did not leave early. (Tr. 60)

Applicant received either written warnings, reprimands or was terminated from at least four different employers from 2013-2019. Each time she claimed it was the employer's fault. (Tr. 75) In Applicant's interrogatories and subject interview, she discussed her employment history including her various warnings and terminations over the years from various employers. (GE 2)

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 (AG) 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, 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "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 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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

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

Applicant's admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent student loans are long-standing and she acknowledged that she has not provided evidence of payment or payment plans for any of the delinquent debts. She believes her salary was so low she could not pay and she believed that the student loans were deferred. She helped her family financially, but keeps promising that she will pay the student loans when she has a better income. He provided no proof that she disputed accounts. She has not acted responsibly. AG ¶ 20(a) and 20(b) are not established. Applicant's delinquent debts remain unresolved and she provided no plan or proof of any earlier payments.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling nor are there clear indications that her financial situation is under control. She has not yet established a payment plan. Her financial problems are not under control. Any doubts must be resolved in favor of the Government.

Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.m against Applicant.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged admitted non-disclosures on her April 2019 security clearance application, I find that she deliberately failed to disclose material facts. She did not give credible answers She had discussed the issues of warnings, terminations, etc in her subject interview. She wants a security clearance to better her job prospects.

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

An omission, standing alone, does not prove a falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.¹ An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on an SCA was deliberate.²

In this instance, it is clear from Applicant's comments at the hearing that she knew that she had not paid on her student loans because she did not have the ability to pay. She also blamed the many employment violations on her four different employers. I find that Applicant intentionally falsified material information about her debts and the various terminations and warnings that she received over the years. AG ¶ 16(a) is established. None of the mitigating conditions apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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;

¹ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

² ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including Applicant's lack of credibility and vagueness at the hearing, I conclude that she deliberately falsified the various forms alleged in the SOR. She also has no plan for paying her student loans and provided no proof that they are indefinitely deferred. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.m: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraphs 2.a-2:d: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge