



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00523
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

11/01/2021

Remand Decision

MASON, Paul J., Administrative Judge:

On April 8, 2021, I issued a decision denying Applicant’s request for a security clearance because she had not mitigated the guideline for financial considerations. On August 11, 2021, the Defense Office of Hearings and Appeals (DOHA) Appeal Board remanded this case to me based on evidence submitted by Applicant showing that she submitted a timely response to Department Counsel’s File of relevant Material (FORM) that did not reach the record for my review. Judging by the totality of all the evidence as a whole, including the Board’s Remand Decision, Applicant’s application for security clearance eligibility is denied.

Statement of the Case

Case History

On February 15, 2019, Applicant initiated her application for a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) required for a position with a defense contractor. She provided an interview (PSI, Item 5) to an investigator from the Office of Personnel Management (OPM) on April 25,

2019. On May 15, 2020, the Defense Counterintelligence Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns arising from financial considerations (Guideline F). This case is adjudicated in accordance with Executive Order (E.O.) 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 in the DOD on June 8, 2017.

On April 8, 2021, I issued a decision in this case based on the lack of independent evidence to support Applicant's claims that her student loan accounts were being paid and in good standing. Overall, she submitted no evidence to demonstrate her debts were being reduced or under control.

In the Appeal Board's August 2021 Remand Decision, the Board found that Applicant's evidence of screen shots of December 7, 2020 and January 13, 2021 (attached to her appeal brief) confirm that her facility security officer (FSO) had possession of the packet of information that Applicant mailed to DOHA and indicated he would resend the packet to the correct address. As the Appeal Board found, Applicant's timely response to the FORM did not reach the record in this case for my review. Accordingly, the Board remanded the case for me to issue a new decision.

On August 20, 2021, I emailed Applicant informing her that I was reopening the record in compliance with the Appeal Board's August 11, 2021 Remand Decision. This document is identified as Hearing Exhibit 1 (HE) 1. Applicant was given until September 27, 2021, to submit additional documentary evidence in support of her evidentiary claims.

On October 12, 2021, at 12:44 p.m., Department Counsel advised Applicant by email that the Government had received no documentary evidence by the September 27, 2021 deadline. (HE 2) Department Counsel also asked her to confirm whether she had sent additional evidence and when. Alternatively, if she chose not to reply with additional evidence, Department Counsel advised her to indicate accordingly.

On October 12, 2021, at 1:04 p.m., Applicant replied to Department Counsel by email. She explained that she had no copies of the packet of information she submitted through the FSO to DOHA because she trusted that the documents would reach their destination at DOHA. She explained that the packet contained evidence of financial aid payments, deferments, and responses to allegations about why some of her loans had not been paid on time. She noted that she currently lives overseas and was unable to reconstruct all of the original evidence in her possession while she was in the states in 2020. (HE 3)

Revised Findings of Fact

The Findings of Fact in my initial decision, dated April 8, 2021, are incorporated by reference. Applicant has a history of financial problems established by 12 delinquent student loan accounts totaling \$67,844. Her only unemployment since 2011 was from September 2018 to January 2019, when she was hired into current position as a help desk engineer.

In her February 2019 security clearance application, Applicant claimed that she had no delinquent debts. I found no documentary evidence from the credit reports validating Applicant's claims in her April 2019 personal subject interview (PSI) with the Office of Personnel Management (OPM) investigator that the student loans were in a deferred status until August 2019, or that she was making payments on the accounts or consolidating them. She furnished no documentary evidence in her undated answer to the May 2020 SOR that she was paying \$53 a month on the loans and they were in good standing.

Applicant's screen shot evidence confirms her communications with the FSO on December 7, 2020 and January 13, 2021. The fact that these communications support her contention that she made a timely response to the FORM does not prove the status of her financial aid payments and deferments, and why some of her loans were not being paid on time. What happened to the packet of information is regrettable, but I am unable to simply accept Applicant's uncorroborated assertions about the contents of the packet of information. I draw this conclusion based on: (1) the incorrect information she provided in her February 2019 security clearance application about having no delinquent debts; (2) her uncorroborated April 2019 PSI claims about the loans being in deferment and not delinquent; and (3) the unsubstantiated claims in her undated answer to the May 2020 SOR that she was paying \$53 a month on the student loan accounts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are not inflexible rules of law, should be applied with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Financial Considerations

The security concerns of the guideline for financial considerations are set forth 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying include:

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

AG ¶ 20 Conditions that could mitigate security concerns include:

- (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.

Revised Analysis

The Analysis and Whole-Person Concept discussion set forth in my initial decision, dated April 8, 2021, are incorporated by reference. Based on Applicant's explanations provided in her April 2019 PSI and her undated answer to the May 2020 SOR, she could have attempted to retrieve other documentation from bank sources to show that she has continued to make payments on the student loan accounts. She could have attempted to obtain documentation from the student loan lenders that would validate her contentions regarding the status of the deferments. Even though the President of the United States decided to hold student loan payments in abeyance as a Covid 19 relief measure during the pandemic, Applicant's loan accounts had been delinquent for more than a year before the President issued the moratorium. She could have provided a more detailed explanation of why some of the student loan accounts had not been paid on time. If she could not acquire the documentation, she could have at least reported her unsuccessful efforts. Although her unanticipated unemployment for four months from September 2018 to January 2019 was beyond her control, Applicant's lack of documented evidence to support her claims is insufficient to mitigate the guideline for 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.l: 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 interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge