



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 20-02425
)
Applicant for Security Clearance)

Appearances

For Government: Moira D. Modzelewski, Esquire, Department Counsel
For Applicant: *Pro Se*

01/04/2022

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the File of Relevant Material (FORM), Items 1-7, and Applicant's Response to the FORM (Response), I deny Applicant's clearance.

On 20 November 2020, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.¹ Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 7 June 2021, when Department Counsel stated no objection to Applicant's Response to the FORM. DOHA assigned the case to me 24 June 2021.

¹DoD acted under Executive Order 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 Security Executive Agent Directive 4, effective on 8 June 2017.

Findings of Fact

Applicant has been sponsored for employment as a software engineer by a defense contractor since October 2019 (Item 4). She is a 56-year-old software engineer who was not employed from May 2018 to October 2019, when she experimented with retirement as she simultaneously helped care for her ailing, elderly mother. She had been employed as a software engineer in the private sector between December 1999 and March 2014, when she was subject to a reduction in force, and between June 2015 and May 2018, when she decided to try retirement. She has never been married and has no children. She served in the U.S. military reserve from March 1985 to September 1990, when she was honorably discharged. She has not previously held an industrial clearance, but had a previous background investigation during her time in the military.

The SOR alleges, Items 3-7 substantiate, and Applicant admits, four delinquent debts totaling over \$20,000 (SOR 1.a-1.c and 1.h). The Government withdrew SOR debts 1.d-1.g (FORM). The debts comprise \$20,000 in delinquent medical bills and a \$500 commercial credit account. The medical bills appear to have originated with an unalleged \$28,000 judgment obtained in December 2016 (Item 7).

Applicant reported several financial issues on her October 2019 clearance application (Item 3), including the debts encompassed at SOR 1.a-1.c, two medical bills later withdrawn by the Government (SOR 1.d and 1.g), and 1.h. She discussed these debts, among others, during an interview with a Government investigator in December 2019 (Item 4) based on her November 2019 credit report (Item 5). Among the other delinquent accounts reflected on the November 2019 credit report were several educational loans that were later brought current and therefore not alleged in the SOR. She claimed, without corroboration, to have been making \$20 monthly payments on SOR debt 1.h. She also claimed to have been making \$500 monthly payments on the medical judgment until about May 2018, when she stopped working and began caring for her mother. She claimed, without corroboration, to have been making efforts to locate the creditor holding the judgment, without success.

Applicant attributed her medical debts to her March 2014 layoff. Initially provided with extended medical coverage, she did not realize the steps she had to take to continue the coverage, undertook additional medical treatment for a condition that her insurance had previously covered, only to discover that her coverage has expired and the treatment was not covered. Changes of address, miscommunications, and other problems kept her from learning that the debts had been reduced to judgment in December 2016. She began making payments with her then-current employer, but those payments stopped when she left that job in May 2018. Her additional unemployment caused the balance to grow, and at the time of her clearance application, credit report, and subject interview, the combined balances were just over \$20,000. Applicant continued to have problems getting a current debt figure. She ultimately provided a 17 May 2021 letter from the creditor confirming a \$10,000 payment that day, and a remaining balance of \$10,202.80 (Response). Applicant claims in her Response that she agreed with the creditor to set up automatic monthly

payments (six at a time, which is what her employer allows) of \$350. However, the creditor's letter does not confirm this plan, and Applicant has provided no corroboration of her past efforts to contact the creditor or to set up a payment plan.

Her two unemployment periods adversely affected her finances beyond the SOR allegations, but Applicant provided documentation of her efforts to resolve those debts and they are not alleged in the SOR. However, she has not documented any credit or financial counseling. She did not provide a budget showing her ability to manage her claimed repayment plan. She did not present any evidence from coworkers, character references, or community groups.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG § 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.²

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Since at least 2016, Applicant has experienced financial problems which left her unwilling or unable to pay her debts.³

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³§9(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a

Although there is no evidence of financial irresponsibility or extravagant living, neither is there any documented effort to address the indebtedness alleged in the SOR, aside from the May 2021 lump-sum payment. The obvious improvement in the status of her education loans which occurred outside the boundaries of the SOR evinces some interest in restoring her finances, but is insufficient to overcome the adverse impact of her ongoing indebtedness.

Further, Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are many, are likely to recur, given that she was relying on the proffered employment for an increase in salary.⁴ Even if her financial problems were due to circumstances beyond her control, her lack of documentation of her claimed efforts to satisfy her debts or to outline her plan for moving forward precludes a conclusion that she acted responsibly to address her debts.⁵ A similar analysis, including the lack of financial or credit counseling, or an articulated plan for addressing the debts, also precludes a conclusion that the debts are being resolved,⁶ and that that resolution was made in good faith.⁷

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.⁸ Applicant's efforts to date do not constitute such a plan, and she has not documented significant action to resolve her debts. She has not adequately addressed the security concerns raised by her past financial issues. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:

AGAINST APPLICANT

Subparagraphs a-w:

Against Applicant

history of not meeting financial obligations;

⁴§20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁵§20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁶§20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

⁷§20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁸ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR.
Administrative Judge