



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



In the matter of:)
)
) ISCR Case No. 20-01884
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 27, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 on June 8, 2017.

With an undated response, Applicant answered the SOR, and she requested a hearing. The scheduling of the hearing was delayed because of the COVID-19 pandemic. I was assigned to this case on July 13, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 27, 2021, and the hearing was convened as scheduled on November 18, 2021. The Government offered

exhibits (GE) 1-5, which were admitted into evidence without objection. The Government's exhibit list was identified as hearing exhibit (HE) I and Department Counsel's discovery letter was identified as HE II. Applicant testified but she did not offer any documents. The record remained open until January 31, 2022, to allow Applicant to submit additional documentary evidence. She did not submit any evidence before the record closed. DOHA received the hearing transcript (Tr.) on December 2, 2021.

Findings of Fact

In her SOR answer, Applicant admitted all the allegations, with explanations. Her admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 39-year-old employee of a defense contractor. She began working at her present job in January 2018. She is a high school graduate. She was married from 2010 to 2018, although she was separated from her husband since 2016. She has a son, age 19, from another relationship. (Tr. 6, 18, 20; GE 1)

The SOR alleged 17 delinquent debts totaling approximately \$36,000. The debts are comprised of collections and charged-off accounts (credit cards, consumer debts, and an auto repossession). The debts are established by Applicant's security clearance application (SCA), her background interview in June 2019, credit reports from March 2020, February 2021, and November 2021, and her SOR admissions in her answer. (GE 1-5; SOR Answer)

Applicant attributes her financial problems to several things, including being the sole income producer when she was married; being separated in 2016, then divorced in 2018, and not receiving any financial support from her ex-husband; not receiving any child support from her son's father (she claimed that he owed about \$70,000 in past-due child support); being let go from her job in 2017; and having to rely on unemployment benefits and credit cards to make ends meet. Because of these factors, Applicant claimed she was unable to address any of her debts and they all remain delinquent. (Tr. 19-20, 24, 30-31, 33)

Appellant admitted that she sold the marital home in 2019 and received proceeds of approximately \$80,000. She did not address any of her delinquent debts with these proceeds, rather she paid her ex-husband \$30,000 as part of the divorce settlement and used \$50,000 to purchase a home for her mother. She also went on vacation with her son. She has not sought out any financial counseling. She thought about looking into filing for bankruptcy protection, but she never followed up on doing so. She was given approximately two months' time after her hearing to present evidence that she was pursuing a loan consolidation plan or bankruptcy protection, but she did not submit any supporting documentation. She has not addressed any of her debts. (Tr. 21, 23-24, 38-39; AE 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 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(a), 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.

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

AG ¶18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

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

All of Applicant's delinquent debts remain unpaid or unresolved. She has a history of unpaid debts as established by the evidence and her admissions. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 has a history of financial difficulties. The SOR debts are ongoing and are therefore recent. All of her debts are unresolved. She did not provide sufficient evidence to show that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Although her divorces and issues with an ex-husband are circumstances beyond her control, she failed to act responsibly in addressing her debts. In particular, she failed to use any of the \$80,000 in proceeds from the sale of her home in 2019 to pay any of her delinquent debts. I find AG ¶ 20(b) does not apply. She failed to seek financial counseling and has not put forth a good-faith effort to resolve her delinquent debts. AG ¶¶ 20(c) and 20(d) 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's federal contractor service and the circumstances surrounding her indebtedness, including her divorce, her non receipt of child support, and her unemployment. However, I also considered that she has made no efforts to

resolve her debts. She has not established a meaningful track record of financial responsibility, which causes me to question her ability to resolve her debts.

Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

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.q: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge