



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01398
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/25/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On August 31, 2020, 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 on June 8, 2017.

Applicant answered the SOR on December 21, 2020, and requested a hearing before an administrative judge. The case was assigned to me on December 15, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 14, 2022, scheduling the hearing for February 1, 2022, by Microsoft Teams. The

hearing was held as scheduled. The Government offered exhibits (GE) 1 through 3. Applicant testified and did not offer any exhibits. There were no objections to the exhibits, and they were admitted into evidence. DOHA received the hearing transcript on February 11, 2022.

Findings of Fact

Applicant admitted both allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. She has been married since 2006 and has two children who are 16 and 14 years old. She earned a bachelor's degree in 1998 and a master's degree in 2014. She is a prospective employee for a federal contractor. (Transcript (Tr.) 14-17; GE 1)

The SOR alleges two student loans debts (§§ 1.a-\$45,694 and 1.b-\$119,570). Applicant testified that she attended an out-of-state college from 1994 to 1998. Her parents took out loans to pay some of her college expenses, and she took out student loans in her own name. She was not certain of the exact amount of her original loans, but estimated the total was likely \$60,000. Applicant took college courses from a private college from 1999 to 2002, while working full time. Her undergraduate student loans were deferred during this time. She used student loans to fund her graduate education and she estimated the amount of those loans to be around \$60,000. She did not earn a degree from this school. (Tr. 25; GE 2, 3)

Applicant testified that when she left school in 2002 she was supposed to start repaying her student loans. She said she paid \$100 a month until about 2006 when she married. She said sometime after 2006 the owner of the loan changed, and she did not know who to pay. She testified that at some point, she began paying again. It is unclear when the loans became delinquent again. She did not provide any documents to corroborate her testimony. (Tr. 25, 30-32)

Applicant began attending online college classes through a private university from 2011 to 2014. She testified that her student loans were deferred during this period. She also was able to get a small loan of about \$3,000, through the GI Bill, because her husband was on active duty in the military. She received her master's degree in 2014. She contacted the creditor and learned she owed a lot more than she thought. She has not made any payments on any of her student loans since graduating in 2014. (Tr. 14-15, 25-26, 32-33)

In 2013, Applicant founded a non-profit organization. She had a detailed business plan, but it technically did not launch until about 2015. She voluntarily left her job in 2015 to run the non-profit. She had a partner. Applicant invested a small amount of her own money into the business, but the bulk of the operating and funding was to come from government grants. She anticipated it would be three years before she was earning an income. She estimated that both her and her partner would each earn about \$90,000.

From 2015 to 2016, Applicant was not earning any income. The business account has a current balance of about \$7,000 to \$8,000. When asked how she intended to make student loan payments during the three years she did not anticipate earning an income, she said she had not factored that expense into her planning. (Tr. 19-24, 33-37)

Applicant went back to work in December 2016. She changed jobs in the later part of 2019 and was then laid off in March or May 2020 due to the pandemic. She was earning about \$24,000 annually in her new position. She was unable to make student loan payments. Her wages were garnished by the Department of Education. She contacted the creditor and was advised that she could apply for an income based repayment plan. By the time she received the application form, the pandemic had begun and student loans were put in a deferred status. She has not contacted the creditor since the loans were deferred. She hopes to participate in a payment plan after the deferment ends. (Tr. 17-19, 24, 37-42)

Applicant did not recall making any voluntary payments on her student loans since 2011. Applicant has no idea how she will repay her student loans. She has no savings. Her family's annual income is about \$65,000. She is conscientious in how her family spends their money. She credibly testified that when she was 18 years old she wanted to attend a certain school and did not consider how expensive it was. When she graduated, she was shocked at how much the monthly amount was to repay her student loans. Then she attended another college that was also expensive, but again did not think about the financial impact. She thought with a master's degree her earning potential would allow her to repay the loans because she would earn more money. By the time she realized the financial impact, she was between 35 and 40 years old and had about \$160,000 of student loan debt. She attempted to get a better paying job with a federal contractor, but is having difficulty meeting its qualifications. She is hoping if she can get a better paying job, she can pay her student loans. (Tr. 41-47)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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's student loans were in a delinquent status for many years before they were deferred due to the pandemic. They are 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 testified that she made some payments on her student loans, but stopped in 2006. She said she resumed paying once she determined the new creditor. She did not provide any corroborating evidence of her payments. She incurred additional student loans to complete her master's degree. She has not provided evidence of efforts to repay those loans. She left her job to start a non-profit organization and did not earn an income. This was a voluntary decision and within her control. When she resumed employment she was underemployed, which may have been beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Although Applicant may want to repay her student loans, she has not made tangible efforts to address the loans and does not have the resources to do so. She gave up a job to start a nonprofit, but did not factor in her obligation to pay her delinquent student loans. Her delinquent debts are recent and ongoing. AG ¶ 20(a) does not apply. AG ¶ 20(b) partially applies.

Applicant has not participated in financial counseling and there are not clear indications that her financial delinquencies are being resolved. Although she may have made some payments on her student loans in the past, she did not provide corroborating documents for that assertion and admitted that she has not made any payments in recent years. The facts do not support the application of AG ¶¶ 20(c) or 20(d).

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 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.

Applicant owes an overwhelming amount of student loan debt that she cannot afford to pay and she is underemployed. She made significant financial decisions without considering how she would repay her delinquent student loans. She has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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.b:	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