



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



In the matter of:)
)
) ISCR Case No. 21-00765
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: *Pro se*

April 27, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On May 15, 2020, Applicant submitted a security clearance application (e-QIP). On May 10, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken 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 the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on a date uncertain, and requested a hearing before an administrative judge. The case was assigned to me on January 20, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on March 3, 2022, and the hearing was convened as scheduled on April 5, 2022. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were

admitted without objection. The Applicant offered one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. Applicant testified on her own behalf. The record remained open following the hearing, until close of business on April 12, 2022, to allow the Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, consisting of ten pages, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 13, 2022.

Findings of Fact

Applicant is 47 years old. She is divorced with no children. She has a GED and an Associate's degree. She holds the position of Solder Operator. She is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

The SOR identified twenty-five allegations involving delinquent debts totaling in excess of \$24,297. Applicant admits each of the allegations in the SOR. Credit reports of the Applicant dated May 27, 2020; April 5, 2021; and December 21, 2021, confirm that she is indebted to each of the creditors listed in the SOR. (Government Exhibits 3, 4, and 5.) Applicant has been working for her current employer since October 2017.

Applicant was married for thirteen years from 2001 to 2016. During her marriage, she had financial problems and filed for Bankruptcy on at least three separate occasions, the first time in 2002, the second time in 2003, and the third time in 2013. In 2003, her debt was discharged. (Tr. p. 26.) In 2013, the bankruptcy was dismissed for failing to make payments according to the agreement. (Tr. p. 26.) Applicant contends that the delinquent debts listed in the SOR were incurred in 2016, around the time she was going through a divorce, or after, and before she obtained her current employment. She confirmed that the debts are all her responsibility. Applicant contacted a financial advisor for assistance in resolving her debt. The deposit to hire him was more than she could afford, and so she is currently saving up to do it. (Tr. pp. 20-22 and 39-40.)

The following delinquent debts are of security concern:

1.a. Applicant is indebted to a creditor for an account that was charged off in the amount of \$14,914. After her divorce, Applicant purchased a vehicle. It was confiscated for illegal parking. Applicant was required to pay a fine of \$2,000 to have it released which she could not afford. The vehicle was sold. The debt remains owing.

1.b. Applicant is indebted to a creditor for an account that was charged off in the amount of \$2,578. The debt remains owing. (Tr. pp. 30-32.)

1.c. Applicant is indebted to a creditor for an account that was charged off in the amount of \$1,421. Applicant co-signed for bedroom furniture for a friend. Her friend defaulted on the account. Applicant understands that she is liable. The debt remains owing. (Tr. pp. 32-33.)

1.d. Applicant is indebted to a creditor for an account that was placed for collection in the amount of \$1,000. The debt remains owing. (Applicant's Answer to SOR.)

1.e. Applicant is indebted to a creditor for an account that was placed for collection in the amount of \$979. Applicant claims that she paid this telephone bill with Verizon and is in good standing. She has failed to provide any documentary evidence to support her contention. The debt remains owing. (Tr. pp. 33-34.)

1.f. Applicant is indebted to a creditor for an account that was placed for collection in the amount of \$532. The debt remains owing. (Tr. pp. 34-35.)

1.g. Applicant is indebted to a creditor for an account that was placed for collection in the amount of \$408. Applicant co-signed for a cell phone for her ex-husband. He defaulted on the account. Applicant understands that she is liable. The debt remains owing. (Tr. pp. 35-36.)

1.h. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$315. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.i. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$270. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.j. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$232. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.k. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$223. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.l. Applicant is indebted to a creditor for an account that was placed for collection in the amount of \$181. Applicant stated that she has made half of a payment, but provides no documentation to support this contention. (Tr. pp. 39-40.)

1.m. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$165. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.n. Applicant is indebted to a creditor for an account that was placed for collection in the amount of \$140. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.o. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$135. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.p. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$110. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.q. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$100. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.r. Applicant is indebted to a creditor for a medical account that was placed for collection the amount of \$100. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.s. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$100. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.t. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$100. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.u. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$65. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.v. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$63. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.w. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$56. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.x. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$55. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

1.y. Applicant is indebted to a creditor for a medical account that was placed for collection in the amount of \$55. Applicant had a polyp removed from her cervix, and is a diabetic who needs ongoing treatment. The debt remains owing. (Tr. pp. 36-37.)

None of the debts listed in the SOR have been paid or otherwise resolved. Applicant purchased another vehicle in January 2019 that she stopped making payments on because the transmission went out. Applicant's most recent credit report shows that the debt was charged off in the amount of \$5,181. (Government Exhibit 5.) Applicant states that she is currently negotiating with the creditor about liability and what she owes. (Tr. pp. 29-30.)

Applicant submitted the top page of a Victim's Report dated September 16, 2021, that she filed with a local Sheriff's department. (Applicant's Exhibit A.) Applicant admitted that the report did not involve or concern any of the debts listed in the SOR. (Tr. pp. 52-53.)

Applicant plans to continue to save her money until she can afford to hire a financial advisor to help her resolve her delinquent debts. She is not incurring any new debts. Applicant's regular monthly expenses include her rent of \$1,500 monthly, her car payment of \$439, car insurance is \$129, food is \$200. If she does not work overtime, at the end of the month after paying her regular monthly expenses she has about \$100 left in discretionary funds. (Tr. p. 42.) She has no savings account. (Tr. p. 43.) She has about \$5,000 in her company's 401(k). She is currently looking for a second job to help her address her delinquent debts. She also hopes to enroll in college and further her education to get promoted at work. (Tr. p. 45.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 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. 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.” The applicant has the ultimate burden of persuasion to obtain 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the 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 adverse 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 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations, and

Applicant has a long history of financial hardship. Her actions or inactions both demonstrate a history of not addressing her debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are potentially applicable under 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;
- (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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

It is noted that Applicant went through a divorce that probably caused some financial difficulties. However, Applicant testified that the debts listed in the SOR were her debts, not her ex-husband's, and that she incurred them after the divorce. Applicant states that she has recently directed her focus at resolving his delinquent debts. However, she has not yet started the process. Applicant's financial irresponsibility and inaction for so long casts doubt on her current reliability, trustworthiness, or good judgment. At this time, Applicant needs time to show the Government that she will continue to properly resolve her financial delinquencies with regular systematic payments and consistency. None of the mitigating conditions are applicable.

There is insufficient evidence in the record to show that Applicant's delinquent debts have been resolved. Overall, Applicant shows no progress towards resolving her debts. She owes a significant amount of money to her creditors that she obviously

cannot afford to pay. There is insufficient evidence in the record to show that the Applicant has carried her burden of proof to establish mitigation of the government security concerns under Guideline F.

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 relevant 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. In the event that Applicant follows through with her commitment to show financial responsibility, sometime in the future she may be found to be sufficiently reliable to properly protect and access classified information.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a. through 1.y.

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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge