



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



In the matter of:)
)
) ISCR Case No. 20-03118
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Brittany Forrester, Esq.

November 9, 2022

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On April 19, 2021, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on June 21, 2021, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on March 21, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 7, 2022, scheduling the hearing for July 7, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 12, which were admitted into evidence. Applicant testified on her own behalf. Applicant presented nine documents attached to her Answer, which I marked Applicant’s Exhibits (AppXs) A through I. The record was left open until July 28, 2022, for receipt of additional

documentation. Applicant offered ten additional documents, which were marked as AppXs J~L and N~S (AppX M has only a cover sheet), and received into evidence. DOHA received the transcript of the hearing (TR) on July 15, 2022.

Findings of Fact

Applicant denied all the allegations in SOR, except for allegation ¶ 1.I. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 38-year-old employee of a defense contractor. She has been employed by the defense contractor since 2020. She has held a security clearance, off and on, since joining the Navy at the age of 17. She is married a third time, and has one adult child, and three children, by her second marriage. Applicant attributes her current financial difficulties to the divorce from her second husband. (TR at page 12 line 21 to page 15 line 14, at page 29 line 19 to page 30 line 30 line 6, at page 40 line 22 to page 41 line 9, and at page 42 line 14 to page 43 line 15.) She is receiving credit counseling. (AppXs A and Q.)

Guideline F - Financial Considerations

1.a. Applicant denies that she has a past-due debt to Creditor A, as the result of a vehicle repossession, in the amount of about \$28,874. She avers that this debt was covered by a bankruptcy filed by her second husband, but has submitted nothing in support of her averment. Applicant also admits to receiving \$6,500 as a part of this transaction, which she used “to pay off debt . . . and . . . put money into savings.” (TR at page 15 line 19 to page 17 line 6, at page 59 lines 7~23, and at page 77 lines 5~24.) The Government’s June 2019 credit report (CR) does not support Applicant’s testimony, but shows this substantial debt is still past-due. (GX 10 at page 3.) This allegation is found against Applicant.

1.b. and 1.c. Applicant initially denied that she had past-due debts to Creditor B in an amount totaling about \$8,525. She thought these debts were included in her second husband’s bankruptcy, but discovered that they still appeared on her credit reports. (GX 10 at page 3 and GX 12 at page 6.) Applicant avers she is making “\$250.00 [payments] every two weeks,” as corroborated by documentation. (TR at page 17 line 7 to page 18 line 10, and AppX J.) These allegations are found for Applicant.

1.d. Applicant denies that she has a past-due debt to Creditor D, as the result of another vehicle repossession, in the amount of about \$2,741. Applicant avers that she disputed this debt; but has heard nothing as a result of her dispute. She does admit “it’s been charged off.” (TR at page 18 line 10 to page 19 line 16, and at page 60 lines 6~24.) As this past-due debt appears on Applicant’s June 2019 CR; and Applicant has offered nothing further in this regard, this allegation is found against Applicant. (GX 10 at page 4.)

1.e. Applicant denies that she has a second past-due debt to Creditor A in the amount of about \$1,821. She avers that this debt may have been covered by a bankruptcy filed by her second husband, but has submitted nothing in support of her averment. (TR at page 19 line 17 to page 20 line 14, and at page 61 lines 1~23.) As this past-due debt appears on Applicant's June 2019 CR, this allegation is found against Applicant. (GX 10 at page 4.)

1.f. Applicant denies that she has a past-due debt to Creditor F in the amount of about \$1,810. Applicant avers that she "could not find any information on this debt." (TR at page 20 line 15 to page 21 line 19.) As this past-due debt appears on Applicant's June 2019 CR, this allegation is found against Applicant. (GX 10 at page 4.)

1.g. Applicant initially denied that she had a past-due debt to Creditor G in an amount totaling about \$39. She avers that she "paid that debt in full," as corroborated by documentation. (TR at page 21 line 20 to page 22 line 6, and AppX K.) This allegation is found for Applicant.

1.h. Applicant denies that she has a past-due debt to Creditor H in the amount of about \$2,759. Applicant avers that she is "unaware if it's on . . . [her] Credit Report." (TR at page 22 line 6 to page 23 line 3, and at page 61 line 24 to page 63 line 14.) As this past-due debt appears as a collection account on Applicant's June 2019 CR, this allegation is found against Applicant. (GX 10 at page 11.)

1.i. Applicant denies that she has a second past-due debt to Creditor G in the amount of about \$2,496. Applicant avers, "that was another account that I had with my husband. It was charged off for him with his Bankruptcy, I'm assuming." (TR at page 23 lines 4~13.) On cross-examination, Applicant admits that "part of the debt is" her's. (TR at page 63 line 15 to page 64 line 14.) As this past-due debt appears as a collection account on Applicant's June 2019 CR, this allegation is found against Applicant. (GX 10 at page 11.)

1.j. Applicant denies that she has a past-due debt to Creditor J in the amount of about \$1,338. Applicant avers "this was another account that I had in my marriage . . . and it was charged off, I'm assuming, with his Bankruptcy. But, it's no longer on [her] Credit Report." (TR at page 23 lines 14~25, and at page 64 line 15 to page 65 line 17.) As this past-due debt appears as a collection account on Applicant's June 2019 CR, this allegation is found against Applicant. (GX 10 at page 11.)

1.k. and 1.n. Applicant initially denied that she had two past-due debts to Creditor K in an amount totaling about \$1,113. She has contacted this creditor, and is in compliance with a payment plan agreed to with said creditor. (TR at page 25 lines 1~24, and AppX L.) These allegations are found for Applicant.

1.l. Applicant initially denied that she had a past-due debt to Creditor L in an amount totaling about \$628. She has contacted this creditor, and is in compliance with a payment plan agreed to with said creditor. (TR at page 26 lines 1~22, and AppX B.) This allegation is found for Applicant.

1.m. Applicant denies that she has a past-due debt to Creditor M in the amount of about \$265. Applicant avers “that account is closed off, and I don’t owe anything on that debt.” (TR at page 26 line 23 to page 27 line 6, and at page 65 line 18 to page 66 line 3.) As this past-due debt appears as a collection account on Applicant’s June 2019 CR, this allegation is found against Applicant. (GX 10 at page 12.)

1.n. Has been discussed, above, with 1.k.

1.o. Applicant denies that she has a past-due debt to Creditor O in the amount of about \$119. Applicant avers “it’s paid off.” (TR at page 27 lines 7~18, and at page 66 lines 4~23.) As this past-due debt appears on Applicant’s June 2019 CR; and no supporting documentation has been submitted, this allegation is found against Applicant. (GX 10 at page 13.)

1.p. Applicant initially denied that she had a past-due debt to Creditor P in an amount totaling about \$111. She has contacted this creditor, and settled and paid said debt for \$89. (TR at page 27 line 19 to page 28 line 5, and AppX N.) This allegation is found for Applicant.

1.q. Applicant initially denied that she had a past-due debt to Creditor Q in an amount totaling about \$611. She has contacted this creditor, and paid this debt. (TR at page 28 lines 6~14, and AppX N.) This allegation is found for Applicant.

1.r. Applicant initially denied that she was in arrears with her child support payments in an amount totaling about \$54,240. She has submitted evidence showing payments of \$253 every two weeks towards her arrearage. (TR at page 28 line 15 to page 29 line 3, and AppX P.) This allegation is found for Applicant.

Guideline E - Personal Conduct

2.a. On February 9, 2015, Applicant received Non-Judicial Punishment (Article 15) for violating Articles 92 (Mutiny and Sedition), 17 (False Official Statements), 123a (Making, Drawing or Uttering Check, or Order without Sufficient Funds), and 134 (General Articles) of the Uniform Code of Military Justice (UCMJ). (GX 7.) Applicant avers that she was never given, or sought, legal counsel prior to accepting punishment as a result of the Article 15. (TR at page 78 line 7 to page 80 line 16.) As a result of accepting Article 15 punishment, Applicant was reduced in rank to an “E-5 and recommended for Administrative Separation” from the Navy.

I find that Applicant falsified “Section 15 – Military History – Discipline – In the last 7 years” of her May 25, 2019 e-QIP by answering “No,” in light of her February 9, 2015 Article 15, noted above.

2.b. Applicant falsely told her DoD investigator that when she “told . . . [her] commander about . . . [her] financial difficulties . . . the commander filed for the” non-judicial punishment. As noted above under 2.a., the reason for her non-judicial punishment also involved allegations of Mutiny and Sedition, and making False Official

Statements. (TR at page 26 line 3 to page 27 line 6, and at page 65 line 18 to page 66 line 3.) I find this to be a willful falsification.

Policies

When evaluating an applicant's national security eligibility, 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 national security eligibility.

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. 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. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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 Executive Order (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 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

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

Applicant has a history of significant past-due indebtedness. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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

Although Applicant can attribute much of her delinquencies to her divorce from her second husband, her financial problems are ongoing. She has a long history of delinquencies, and still has yet to address past-due indebtedness in excess of \$42,000. She has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations is found against Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant not only falsified her e-QIP, but was not entirely truthful during her follow-up interview. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

None of these apply. Applicant has shown a pattern of concealment and lack of candor. Personal Conduct is found against Applicant.

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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by her peers, and by her supervisor. She performs well at her job. (AppX H.) However, overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations and Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b. and 1.c.:	For Applicant
Subparagraphs 1.d~1.f.:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h~1.j.:	Against Applicant

Subparagraphs 1.k. and 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p~1.r.:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.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 interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge