



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



In the matter of:)
)
) ISCR Case No. 20-03646
)
Applicant for Security Clearance)

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/19/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On February 5, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on April 12, 2021, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2022.

The hearing was convened as scheduled on May 24, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and A(1) through A(5), which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted an email that I have marked AE B and admitted without objection.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. She has worked for her current employer since June 2017. She served on active duty in the U.S. military from 2010 until she was honorably discharged in 2015. She has a bachelor's degree earned in 2005 and a master's degree earned in 2007. She is married with two children. (Tr. at 15-16, 29-30; Applicant's response to SOR; GE 1)

Applicant's husband had a good job in 2015. They felt their finances permitted her to leave the military, start her own business, and home school their children. Shortly after her discharge, her husband was in a serious motorcycle accident involving multiple surgeries and time off work. He did not lose his salary, but his income was largely commission-based, so it was greatly reduced. Not all medical bills were covered in the settlement they eventually received. Applicant bought into the fitness industry, which she financed at least in part with a loan from a credit union. Her husband was laid off in 2016, and unemployed for a period until he obtained a lower-paying job. Her business was ultimately unsuccessful, but they had contracts to fulfill, so they stayed until they could honor all of their contracts. (Tr. at 16-20, 33-37; GE 1, 2; AE A, A(5))

Applicant and her husband did what they could to avoid bankruptcy and losing their house to foreclosure. They worked to bring other debts current, including her student loans, an auto loan, and the mortgage. They were able to sell their house for a small profit. They decided that she would have to get a job. She accepted her current job and moved to an area with a lower cost of living. Her husband followed and eventually found employment. (Tr. at 18-21, 38, 47; GE 1, 2; AE A, A(3))

The SOR alleges \$43,868 owed on the defaulted loan to the credit union (SOR ¶ 1.a) and four delinquent medical debts totaling about \$3,650 (SOR ¶¶ 1.b-1.e).

Applicant talked to the credit union about the \$43,868 defaulted loan on several occasions in 2016 and 2017. She stated that the credit union would only accept payments of \$2,000 per month, which she could not afford. She was told that the credit union was charging off the debt. Applicant did not contact the credit union after 2017, because she thought when they charged the debt off, that meant they were no longer interested in collecting the debt. (Tr. at 21-23, 27, 38-40; GE 1-5; AE A)

Applicant testified that she thought the four medical debts were eventually resolved by payments from the settlement or by the Department of Veterans Affairs (VA). The debts are listed on the 2020 combined credit report. One debt was reported by all three credit reporting agencies; two debts were reported by both TransUnion and Equifax; and one debt was just reported by TransUnion. Two debts were listed on the November 2020 Equifax credit report. There were no medical debts listed on the January 2022 Equifax credit report. (Tr. at 17-18, 39, 44-46; Applicant's response to SOR; GE 1-5; AE A, A(4))

Applicant's finances have stabilized. She and her husband maintain a budget. Her annual salary is about \$115,000, plus a bonus of about \$3,000. Her husband earns

about \$50,000 to \$60,000 annually. She has about \$50,000 in her 401(k) retirement account. She and her husband bought a home in their current location in about April 2020, financed with a mortgage loan of about \$306,000. They bought a new vehicle in about November 2020, financed with an auto loan of about \$54,800. Their monthly payment is \$893. Applicant has student loans. They have been current for several years, but they have grown from about \$52,000 to about \$77,000. They are apparently on pause as part of COVID relief. (Tr. at 21, 24-26, 31-33, 38, 41-44; GE 1-5; AE A, A(3))

After the hearing, Applicant contacted the credit union for the \$43,868 defaulted credit union loan. Their best settlement offer was \$15,384. She stated that she does not have the savings to pay that amount at this time. She and her husband discussed borrowing the money from a few different sources, however they “do not feeling putting [their] family in more debt is in spirit with what the government has asked in this case.” (AE B)

Applicant submitted documents attesting to her excellent job performance and moral character. She is praised for her dedication, trustworthiness, loyalty, and integrity. (AE A(1), A(2))

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 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.”

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including a defaulted loan and unpaid medical debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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's husband was in a motorcycle accident, which affected his commissions, and he later lost his job. Then her business failed. These events, which resulted in Applicant's financial problems, were beyond her control. In order to receive the full benefit of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances.

Applicant and her husband did many things right. They did what they could to avoid bankruptcy and losing their house to foreclosure. They were able to sell their house for a small profit and worked to bring other debts current. She took a job in an area with a lower cost of living, and her husband followed her. Except for the large debt to the credit union, their finances are now stable, but that stability came at the expense of the credit union. She admitted that she did not contact the credit union after 2017, because she thought when they charged the debt off, that meant they were no longer interested in collecting the debt. Without the burden of paying that debt, they were able to buy a house and a new vehicle, financed with an auto loan of about \$54,800 and \$893 monthly payments. Post-hearing, Applicant contacted the credit union. She stated that their best settlement offer was \$15,384, but she did not have the savings to pay that amount at this time.

I find the medical debts sufficiently resolved as to be mitigated. As to the credit union debt, I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay the debt. Her financial issues are recent, ongoing, and continue to cast doubt on her reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable to that debt.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service and favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.e:	For Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge