



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



In the matter of:)
)
) ISCR Case No. 21-01891
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

October 6, 2022

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 10, 2019. (Item 3.) On September 15, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. (Item 1.) The DOD CAF 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on September 17, 2021 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on March 10, 2022. On March 14, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 7. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government’s evidence. She received the FORM on March 21, 2022, and did not respond. Items 1 and 2 contain the pleadings in the case. Items 3 through 7 are admitted into evidence. The case was assigned to me on June 21, 2022.

Findings of Fact

Applicant, age 69, is married and has no children. (Item 3 at pages 7, and 15~16.)

Guideline F - Financial Considerations

1.a., 1.c.~1.e., and 1.g.~1.j. Applicant admits to owing eight past-due debts totaling about \$69,776. Despite having about ten months (September 2021~July 2022) to do so, Applicant has submitted nothing further in this regard. These allegations are found against Applicant.

1.b. Applicant claims that the alleged past-due debt to Creditor B for about \$1,179 “has been paid in full.” As this debt appears as past-due on the Government’s most recent March 2021 credit report (Item 5 at page 2); and Applicant has submitted nothing in support of her averment, this allegation is found against Applicant.

1.f. Applicant denies the alleged past-due, medical debt to Creditor F in the amount of about \$3,738. As this debt appears as past-due on the Government’s March 2020 credit report (Item 6 at page 11); and Applicant has submitted nothing in support of her averment, this allegation is found against Applicant

Guideline E - Personal Conduct

2.a Applicant answered, “No,” in answer to Section 26 – Financial Delinquency Involving Routine Accounts . . . in the past (7) years.” (Item 3 at page 26.) In her answer to the SOR (Item 2 at page 4), and in her response to DOHA interrogatories (Item 4 at page 4), Applicant avers that her husband handled their “financial matters.” She further avers she was told there were no “unpaid bills.” Applicant thus claims she was unaware of the delinquencies noted under Financial Considerations in Paragraph 1 of the SOR.

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 (AG) 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, these guidelines are applied 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The concern under this guideline 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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified

information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these apply. Applicant has significant past-due indebtedness that she has yet to address. Financial Considerations is found against Applicant.

Guideline E - Personal Conduct

The concern under this guideline 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.

Based on Applicant's alleged deliberate falsification of her SCA, the following disqualifying condition could apply:

AG ¶ 16 (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.

Applicant answered, "No," to Section 26 on her October 2019 SCA.. Therefore, AG ¶ 16(a) is established.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 17 (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17 (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;

AG ¶ 17 (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; and

AG ¶ 17 (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.

Applicant denied intentionally falsifying her SCA; but she has offered nothing as to her character, such as letters of support from those who know Applicant, to support her averment. After considering the mitigating conditions outlined above, none of them apply. Personal Conduct is found against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant deliberately falsified her SCA, and she has not mitigated the security concerns raised by her financial indebtedness. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.j: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's national security eligibility for access to classified information. Clearance is denied.

Richard A. Cefola
Administrative Judge