



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-01631
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

12/13/2022

Decision

MASON, Paul J., Administrative Judge:

Applicant has taken no action to resolve the listed debts. Her claims of paying off more than \$46,000 in unlisted debt in the last two years has no documentary support. Her evidence has not mitigated the continuing security concerns arising from the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On August 21, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On September 24, 2021, she provided an interview (PSI) with an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated September 9, 2022, detailing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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 in the DOD on June 8, 2017.

Applicant provided her answer on September 15, 2022. She elected to have her case decided on an administrative (written) record instead of a hearing. The Government sent a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant on October 19, 2022. Applicant received the FORM on October 27, 2022. The Government advised Applicant that, in her response, she could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. The response was due on July 24, 2022. The Defense Office of Hearings and Appeals (DOHA) received Applicant's two-page undated response. The response was not time-stamped to show when DOHA received the response. Department Counsel applied her initials next to "I do not object (Initial) location, indicating she did not object to Applicant's response. There is no indication when she applied her initials to the document. I was assigned the case file on December 1, 2022.

Rulings on Procedure

In a footnote on the second page of the FORM, Department Counsel informed Applicant that her September 24, 2021 PSI (Item 6) would be excluded from evidence if she objected to the exhibit. Alternatively, Department Counsel advised her that she could correct, update, or modify the exhibit to improve its clarity or accuracy. Applicant did not object to this exhibit or any of the other five items of evidence. See, E3.1.20. of DOD Directive 5220.6, page 52. All six items identified in the Government's FORM and Applicant's response to the FORM were admitted into evidence.

Findings of Fact

There are six delinquent commercial accounts alleged in the September 2022 SOR. All the accounts are credit card or credit accounts. The total amount of debt is about \$49,048. The debts became delinquent between August and September 2021. Applicant admitted that she owed the debts, and the Government credit bureau reports confirm her admission. Applicant stated that the listed accounts became delinquent during her two periods of unemployment from October 2014 to December 2015, and September 2017 to March 2019. (GE 4, 5; GE 6 at 5-6; answer to SOR)

Applicant is 37 years old. She earned a high school diploma in June 2003. She is single with a 14-year-old son. Her security clearance application indicates she has been working as a security officer since July 2021. However, she has not started this job as her security clearance application is still pending. She is still employed at the security officer position that she began in April 2019. She was unemployed from September 2017 to March 2019. From January 2016 to August 2017, she worked in the

sanitation department for a state government. She was unemployed from October 2014 to December 2015. In the previous five years, Applicant was correction officer at a detention facility. (GE 3 at 10-16; GE 6 at unnumbered first page)

Applicant signed and certified an e-QIP on August 21, 2021. She listed no delinquent debts in response to Section 26 of the application requiring information about delinquent taxes, delinquent accounts, and other financial issues. In her September 2021 PSI, she claimed that she had no accounts turned over for collection. The OPM investigator then confronted her with the delinquent debts appearing in her credit report. Applicant agreed with the information in the credit report, but believed that she did not have to disclose the delinquent accounts in her e-QIP because they were more than seven years ago. During her two periods of unemployment, she used credit cards and loans to pay for gas, her son's school supplies, and other basic needs. Applicant has not made any agreements to address the past-due accounts because her current income is not sufficient to make payments. She intended to hire a debt consolidation service to set up payment plans with the creditors and collection companies. Currently, she does not buy anything she does not need, and does not purchase unnecessary items for her son. (Item 3 at 30; Item 6 at 5-6)

In her undated response to the FORM, Applicant claimed that she paid over \$46,000 to satisfy four medical accounts, an installment car loan, and a credit card account, in the last two years. No independent evidence, e.g., payment receipts, bank ledgers, credit bureau reports, or similar documentation was presented to substantiate her claim. She currently helps her parents financially with utilities, groceries, car insurance, and cable. She is currently trying to build a home for herself and her son on a piece of real estate that her father has owned for the last 20 years. (Response to FORM)

Applicant encountered financial difficulties when she lost her job and could not find employment. She relied on bad advice from a close family member that even if she paid off the delinquent debts, it would still negatively affect her credit score. If she receives her security clearance, she will be able to earn more money and begin to negotiate payment plans to repay the creditors and collection agencies. (Response to FORM)

Applicant provided no evidence of participation in a debt consolidation company. She provided no evidence of her current earnings or a monthly remainder after payment of her expenses. There is no evidence of financial counseling or utilizing a budget.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

A person's practice of paying her voluntarily incurred debts is a private matter until evidence shows that she is not paying her debts in a timely fashion. Rather than ignore the accounts after they fall delinquent, an applicant should exercise good judgment by alerting the creditors of her financial predicament, even if she has already stopped making payments because of insufficient funds. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government credit reports establish that all of the

debts listed in the SOR have been delinquent since August and September 2021. Applicant informed the investigator that she had not negotiated payment plans with any of the creditors or collection agencies because she could not afford payments. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) does not apply because I find Applicant is willing to repay the delinquent debts, but lacks the funds to repay.

AG ¶ 20. Conditions that could mitigate security concerns include:

(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.

AG ¶ 20 (a) does not apply since Applicant still owes about \$49,000 in delinquent debt to six creditors or collection agencies. With no evident changes in her financial practices, they will probably persist in the future. Her failure to take charge of her delinquent debt responsibilities continues to raise doubts about her reliability and judgment.

Applicant's unemployment from October 2014 to December 2015, and from September 2017 to March 2019, was largely beyond her control. The loss of her income had an adverse impact on her bill-paying ability. However, for the mitigating condition to be fully applicable, an applicant must provide credible documented evidence that she acted responsibly under the circumstances. Applicant has been steadily employed since April 2019, but has done nothing to address her delinquent debt. This three-year period of inaction clearly shows that she did not act reasonably and responsibly under the circumstances. AG ¶ 20(b) has limited application to the surrounding circumstances of this case.

The lack of financial counseling, evidence of a budget, or participation in a debt consolidation service, removes AG ¶ 20(c) from consideration. Applicant's delinquent

debts are not being resolved or under control. AG ¶ 20(d) does not apply because Applicant is not engaged in a good-faith effort to repay his creditors.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has not furnished sufficient evidence to establish that her delinquent debts are being resolved or under control. Although the listed debts may no longer be legally enforceable because seven years has passed under a state statute of limitations, the debts are still significant for security clearance purposes. See ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016) Relying on a statute of limitations does not constitute a good-faith effort to eliminate delinquent debts for an applicant who aspires for a security clearance. See ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish her case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that she has a plan for debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) Judging by the totality of all the evidence, Applicant has no plan in place and has furnished no evidence of even sporadic payments on the past due accounts. After a full review of the entire record from an overall common-sense point of view, Applicant's ongoing financial problems have not been mitigated.

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.f:

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 eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge