



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-02433
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/11/2022

Decision

MASON, Paul J., Administrative Judge:

Applicant’s unsupported evidence in mitigation is insufficient to overcome the security concerns raised by the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On January 26, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) for security clearance eligibility so that she could work for a defense contractor. On April 1, 2021, she provided a personal subject interview (PSI, Item 4) to an investigator from the Office of Personnel Management (OPM). On December 3, 2021, the Defense Counterintelligence Security Agency (DCSA) could not make the necessary affirmative finding to grant Applicant’s security clearance and issued an SOR to her detailing security reasons under the financial considerations guideline (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 an undated answer to the SOR. 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 June 14, 2022. Applicant received the FORM on June 24, 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. No response was received by Defense Office of Hearings and Appeals (DOHA). The case file was assigned to me on October 3, 2022.

Rulings on Procedure

In a footnote on the second page of the FORM, Department Counsel informed Applicant that her April 1, 2021 PSI (Item 4) 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 four items. See, E3.1.20. of DOD Directive 5220.6, page 52. All items were admitted into evidence.

Findings of Fact

The SOR contains two delinquent medical accounts and a delinquent mortgage. The SOR ¶ 1.a medical account became delinquent in September 2019, the SOR ¶ 1.b medical account, in November 2018. The mortgage account (SOR ¶ 1.(c)) fell delinquent in July 2021. The total amount of delinquent debt is \$89,929. Applicant admitted the past-due accounts.

Applicant is 40 years old and has been married to her second husband since 2015. She has two adult-aged children, ages 21 and 18, and a stepson, 26 years old. Her husband is the caretaker for his parents and he has had health issues since 2012. Applicant has owned her home (SOR ¶ 1(c)) since 1997. She earned college credits from September 1994 to November 1994, from March 1993 to December 1998, and from April 2006 to April 2009, without receiving a degree. (Item 3 at 10-11, 19-20, 24-29)

January 2021 e-QIP (Item 3)

Since October 2009, Applicant has been working for a staffing organization. She identifies her position as a "PEBLO." No additional information was provided concerning the nature of her employment. On-line research reveals that her employer provides staffing solutions, i.e., locating qualified personnel to fill positions for large and small businesses. (Internet; Item 3 at 13) Before her current job, she was a financial

coordinator from December 2006 to June 2008. From January 2004 to June 2005, Applicant was a medical office assistant. (Item 1 at 12-16)

Applicant revealed that she has never had a security clearance. She noted that she worked at a job for 11 years and had to fill out and submit background paperwork more than once. After reviewing her listed employment, she must be referring to her current position. When she inquired about the outcome of the background checks, she was told the paperwork was lost, then she was informed that the background checks yielded positive results. No additional information was provided. (Item 3 at 41)

Applicant indicated that she was delinquent on the three accounts listed in the SOR. Regarding the medical accounts, she stated she was trying to pay them off. Her payment efforts for these debts and the mortgage have been frustrated by her husband's unemployment for the last two years and his health problems since 2012. She was considering selling the home. Applicant claimed that she signed up for a credit counseling service and was in the process of collecting account information so that the service could process the delinquent accounts. (Item 3 at 41-46)

April 2021 PSI (Item 4)

In Applicant's April 2021 PSI, she indicated that she had not signed up or started the credit counseling service as she stated in January 2021 e-QIP. She incurred the SOR ¶ 1.(a) medical debt because she had no medical insurance for the services she received. She claimed that she was under a payment plan with the SOR ¶ 1.a collection agency and was paying what she could. She indicated that she had not made arrangements with the SOR ¶ 1.(b) collection agency, but intended to establish a payment plan. Regarding SOR ¶ 1.c, Applicant claimed that her application to refinance the mortgage was pending. She mentioned that she was looking for part-time work to earn additional income. She insisted she was willing to pay off the overdue debts. (Item 4 at 4-5)

Item 2 - Undated Answer to SOR

Along with her husband's unemployment and medical issues that she referenced in her PSI, and her e-QIP, Applicant explained in her undated answer (Item 2) that she incurred financial problems when she lost Social Security benefits after her children moved out of her home. The loss of benefits reduced her income although her mortgage (SOR ¶ 1.(c)) was never adjusted downward. Without hurricane insurance, Applicant was not reimbursed for repairs she made because of damage caused by several hurricanes over the years. As she stated earlier in the security investigation, she was trying to refinance or sell her home. Though she stated in her PSI that she was not participating in credit counseling, she mentioned in her Answer that she had changed her mind and decided to join the credit counseling service. (Item 2)

During the course of the security investigation, Applicant waffled on the subject of credit counseling. She has not provided any documentation that proves she engaged

in any credit counseling services. She claims she is in a payment plan with the SOR ¶ 1.a collection agency, but provided no independent evidence of a plan or payments that she has made. The same is true for the SOR ¶ 1.b collection agency. There is no evidence that Applicant has taken any steps to bring her mortgage back to a current status or to sell the property, and she has not furnished updated information on the refinancing of the mortgage. Applicant did not address her attempts to find part-time work. Other than describing her financial situation as strained (Item 4 at 4-5), Applicant failed to present information that specifically shows how she has tailored her spending and other financial habits to account for her husband's medical issues since 2012 and his unemployment since 2019.

Policies/

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines and all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of the whole-person concept. 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

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.

Applicant's two delinquent medical accounts and a delinquent mortgage total almost \$90,000. She has made repeated claims about her efforts to repay the medical accounts and sell her home. The accounts remain delinquent. AG ¶¶ 19(a) and 19(c) apply.

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.

Though only three listed accounts became delinquent less than four years ago, the accounts are still delinquent. Without evidence of successful financial habits, and acquisition of medical insurance, the surrounding circumstances in which these accounts arose imply a continuation of similar financial difficulties in the future. AG ¶ 20(a) does not apply.

The first prong of AG ¶ 20(b) applies because of the unemployment of Applicant's husband. Her husband's medical condition, as well as her medical condition, requiring treatment she could not pay for, provides additional mitigation under the first prong of the condition. However, the overall benefit to Applicant under AG ¶ 20(b) is limited due to the lack of evidence of documented action to responsibly resolve the delinquent debts. AG ¶ 20(d), requiring a good-faith effort to repay creditors, is unavailable for mitigation.

AG ¶ 20(c) is not applicable because Applicant has not received financial counseling. If, as she contends, she finally signed on for the credit counseling she previously declined during the security investigation, she provided no documented proof of participation in the counseling service. There is no evidence the debts are being resolved or under control.

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations 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 common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 40 years and has been married since 2015. She has two adult-age children and one adult-age step child. Though she provided no documentation concerning the quality of her work, the fact that she has been employed for over 12 years by the same employer deserves some acknowledgment.

The foregoing favorable evidence is insufficient to support Applicant's security clearance application. As noted throughout the course of the security investigation and this decision, Applicant has made several repeated claims of having a payment plan in place and making payments under the plan. Her assertions are not credible because of the lack of independent evidence, e.g., cancelled checks, pay stubs or receipts, bank ledger entries, or other documentation confirming that Applicant made payments to the listed creditors.

In Guideline F cases, the DOHA Appeal Board has held in a long line of cases that 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) From the record presented. Applicant has no plan in place and furnished no evidence of even sporadic payments on the medical accounts when she was able to pay. Her promises to pay the delinquent debts are insufficient. See, e.g.,

ISCR Case No. 14-04656 at 2 (App. Bd. Sep. 18, 2015). Having considered the entire record from an overall common-sense point of view, Applicant's ongoing financial struggles 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
Subparagraph 1.a-1.c:	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. Applicant's application for a security clearance is denied.

Paul J. Mason
Administrative Judge