



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



In the matter of:)
)
) ISCR Case No. 19-03878
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

01/20/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has ongoing, unresolved financial delinquencies that she has not addressed. She did not provide sufficient evidence to mitigate security concerns arising from her delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 11, 2018. On November 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued her a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The CAF issued the SOR under Executive Order (Exec. Ord.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), implemented by the DOD on June 8, 2017.

Applicant answered the SOR on January 14, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 5, 2022. On October 31, 2022, DOHA issued a notice scheduling the hearing for December 5, 2022, by video-teleconference through an online platform.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1, as well as GE 3 through GE 5, which I admitted without objection. (GE 2 was provided to Applicant before the hearing and was marked, but was not offered or admitted, and I have not considered it). Applicant testified but provided no documents. I held the record open until January 5, 2023, to allow Applicant the opportunity to submit additional documents. She timely submitted an e-mailed narrative statement and five documents, which I marked as Applicant Exhibit (AE) A through AE F, and admitted without objection. DOHA received the hearing transcript (Tr.) on December 14, 2022. The record closed on January 5, 2023.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.d, and she denied SOR ¶¶ 1.e-1.i, all with brief explanations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence submitted, I make the following findings of fact.

Applicant is 33 years old. She graduated from high school in 2007, and she has attended some college courses. She studied to be a pharmacy technician but did not complete the certification because she could not afford the required unpaid externship. She married in 2010, at age 22, separated from her husband in June 2013, and the divorce was finalized a year later. She has three girls, ages 12, 6, and 8 months. She receives no child support from their fathers because she cannot locate them. (Tr. 29-33; GE 1; AE E)

In 2010, Applicant was working in aviation for a small airline. She married and moved to another state with her husband, and was unable to transfer jobs. Her husband was from Africa. She sponsored his entry to the United States, in hopes that he would become a U.S. citizen. When they moved to the new state for his job, he was not able to provide financial support, so she sought employment in retail. (Tr. 45-46)

Applicant had a variety of jobs until March 2015 when she began working for a large defense contractor and subcontractor, in State 1. She worked there for about three years, earning \$35,000 a year. (AE A, AE B, AE C) She then returned to her home state, and worked at a computer help desk for a university health system. She was then self-employed managing a cleaning service. That job is ongoing but the work is sporadic. (Tr. 36; GE 1; AE A)

Between January 2019 and early 2021, Applicant made between \$20 and \$24 an hour in a job in the defense industry. She then worked for a large contractor as a project manager and cyber-security specialist, with an annual salary of about \$76,000 or

\$80,000. She worked in that job for about a year. She then became a cyber-security analyst earning \$107,000 annually, until February 2022, when she likely lost her interim clearance after the SOR was issued. Her youngest daughter was born a month later. (Tr. 33-42; GE 1; AE A, AE D, AE F)

Since February 2022, Applicant has had only sporadic employment. She was unemployed until June 2022, when she took a job as a security guard, making \$16 an hour, full time. That job ended in mid-October 2022, about six weeks before the hearing, and she remains unemployed, though sponsored for a clearance. (Tr. 39-42)

The SOR allegations concern nine delinquent debts, totaling about \$45,000. The debts are established by Applicant's credit reports from December 2018, August 2019, and December 2019, as well as Applicant's SCA, on which she disclosed numerous debts. (GE 1, GE 3, GE 4, GE 5)

SOR ¶ 1.a (\$20,429) is a charged-off debt relating to a repossessed auto. SOR ¶ 1.c (\$9,112) is a past-due account relating to another repossessed auto, purchased at the same time. Applicant purchased the cars in State 1 after she moved there with her husband. The car relating to SOR ¶ 1.c, purchased in 2015, was a gift for a friend. She said she had settlement offers for both debts, for either \$2,000 or \$3,000, and planned on paying them. She has not been able to do that due to her employment instability and family situation. (Tr. 49-54, 57-61; GE 3; GE 4; GE 5) As of December 2019, she had another auto account, with the same creditor as for SOR ¶ 1.c, with over \$15,000 due (though current at the time). (GE 5)

SOR ¶ 1.b (\$10,898) is an account placed for collection related to educational expenses for a trade school. This is an education debt that Applicant incurred while pursuing certification as a pharmacy technician. Her then husband said he would pay those expenses but did not do so. She had to use student loans instead. She was on a re-payment plan of \$5 a month between 2018 and 2012 but the account is again delinquent and unresolved. (Tr. 32-33, 59-61; GE 3; GE 4; AE A) As of December 2019, Applicant also had almost \$26,000 in federal student loans. (GE 5)

SOR ¶ 1.d (\$3,222) is an account placed for collection relating to unpaid rent from an apartment in State 1 that Applicant and her then husband lived in when they were there. He told her he would pay it, but instead he just moved out. She was unable to afford the rent alone. The debt remains unpaid. (Tr. 52; GE 3; AE A)

SOR ¶¶ 1.e (\$1,438), 1.f (387), and 1.i (\$115) are debts placed for collection, for past-due telephone or cell phone accounts. The collection agency is the same for each account, but the debts involve three different phone companies. SOR ¶ 1.g (\$255) is a debt placed for collection by the city in State 1 where Applicant moved with her then husband. SOR ¶ 1.h (\$224) is a medical debt placed for collection. Applicant denied these debts and believed she had paid them. She did not provide documentation of any payments. (Answer; Tr. 48-49, 56; GE 3)

Applicant has not participated in recent credit counseling. Due to her recent unemployment, Applicant has depleted her retirement and other savings. She is dependent on support from friends and family to make ends meet. She has not been able to pay rent since May 2022, and at the time of the hearing, she was facing possible eviction. (Tr. 62-66)

After her hearing, Applicant provided a narrative statement by e-mail (AE A), her divorce decree (AE E) and several documents regarding offers of employment at prior jobs. (AE B, AE C, AE D, AE F)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

Analysis

Guideline F, Financial Considerations

¶ 18: The security concern for financial considerations is set out, in pertinent part, in AG

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. . . .

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 delinquencies going back several years. The debts alleged in the SOR are established by credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 lists conditions that could mitigate financial considerations security concerns. 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, or 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, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has several large debts that are several years old. She purchased cars, either for herself or for a friend, that she could not afford. The cars were repossessed. She married young, moved to a new state with her husband, who said he would provide for her but did not. The marriage soon ended. To her credit, she managed to find employment in the defense industry in that locale, but she also became financially extended, with expenses she could not pay. She returned home and ultimately returned to the defense industry, making annual income of between \$76,000 and \$107,000. However, she either did not, or could not, resolve many of her debts. Her more recent employment instability, and family situation, raising three young children including an infant, has also kept her from addressing her debts in a significant way. Her debts are therefore ongoing and continue to cast doubt on her current judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant has experienced some employment instability and financial hardship, but she also has a track record of spending beyond her means. She has not participated in credit counseling, and her debts are not being resolved or under control. Despite apparent evidence that she made a good living in the defense industry until recently, she did not establish, or document, any good-faith efforts to pay or resolve any of her delinquent debts. AG ¶¶ 20(b), 20(c), and 20(d) do not apply.

Applicant denied several debts, asserting that they have been paid. Several of those debts no longer appear on more recent credit reports. However, she did not provide any documentation that the debts are paid, resolved, or that her disputes of responsibility are valid. AG ¶ 20(e) does not apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

I considered Applicant's prior experience in the defense industry. I also considered her marital hardship and the fact that her recent employment instability has had a significant detrimental effect on her finances and ability to make ends meet. But this does not outweigh the security concerns relating to her financial delinquencies, which remain ongoing. Applicant needs to address her debts in a responsible way by establishing a track record of steady payments towards her debts and a significant period of financial stability before she can be considered eligible for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. 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

Subparagraphs 1.a-1.i: Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge