



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



In the matter of:)
)
) ISCR Case No. 21-01912
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

03/22/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 20, 2022, 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 June 24, 2022, and requested a hearing before an administrative judge. The case was assigned to me on January 25, 2023.

The hearing was convened as scheduled on February 17, 2023. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that I have marked AE G through J and admitted in evidence.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. The company is sponsoring her for a security clearance, but she is essentially on unpaid leave pending her security clearance adjudication. She has worked part-time at another job since January 2023, but she expects to return to the defense contractor if she receives a favorable result. She has associate degrees that she earned in 2009 and 2010, and she is close to obtaining a bachelor's degree. She married in 1986 and divorced in 1990. She married again in 1998 and divorced in 2004. She has three adult children. A fourth child passed away. (Tr. at 18-24; Applicant's response to SOR; GE 1)

Applicant has worked on the same military installation for different contractors since about 2012. She was periodically laid off when there was no work or when a contract changed. When that occurred, she would fall behind on her debts and then attempt to pay them when she returned to full-time employment. (Tr. at 19-24; GE 1-4)

The SOR alleges two defaulted student loans totaling \$98,958 and 12 delinquent debts totaling about \$17,000, except the \$1,188 debts alleged in SOR ¶¶ 1.e and 1.k are duplicates. The SOR debts are listed on a May 2021 credit report, an August 2022 credit report, or both credit reports. The \$1,842 and \$2,190 debts alleged in SOR ¶¶ 1.d and 1.l appear that they may also be duplicates, with the \$2,190 debt listed on the August 2022 credit report with a \$0 balance.

The May 2021 credit report listed that Applicant paid or settled delinquent debts of \$1,073, \$182, \$275, \$144, \$811, and \$206. These debts were not alleged in the SOR because they were resolved before the SOR was issued. Other debts resolved before the SOR was issued include a \$944 debt (SOR ¶ 1.g) that was paid in September 2021, a \$327 debt (SOR ¶ 1.i) that was paid in June 2021, and a \$522 debt (SOR ¶ 1.j) that was settled and paid in April 2018. The \$300 debt alleged in SOR ¶ 1.m has been paid. Applicant paid \$50 to a collection company for an unidentified debt in March 2023. (Tr. at 32-37, 41; Applicant's response to SOR; GE 1-4; AE A, C-I)

Applicant consolidated her student loans in 2017. They became past-due at some point. She stated that she attempted to address them in 2020, but she was told that they were on hold because of relief associated with the COVID-19 pandemic. That hold has been extended several times and is currently in effect until at least June 2023. She is in the process of applying for an income-driven relief plan. She credibly testified that she intends to pay all of her debts. She intends to keep her part-time job after she returns to work for the defense contractor and use the extra money to pay her debts. (Tr. at 24-29, 38-41, 46; GE 2-4; AE B, J)

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 and delinquent 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 financial problems are directly related to her employment issues. She was periodically laid off when there was no work or when a contract changed. When that occurred, she would fall behind on her debts and then attempt to pay them when she returned to full-time employment. She resolved six non-SOR debts totaling \$2,701 and three SOR debts totaling \$1,793, for a total of \$4,494, before the SOR was issued. Her student loans are paused and she is in the process of applying for an income-driven relief plan. She still has debts to pay, but she credibility testified that she is committed to paying all of them.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant established that she has a plan to resolve her financial problems, and she took significant action to implement that plan. She acted responsibly under the circumstances and made a good-faith effort to pay her debts. Her finances do not cast doubt on her current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.¹

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: For Applicant

Subparagraphs 1.a-1.n: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

¹ The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to further monitor Applicant's finances.