



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



In the matter of:)
)
) ISCR Case No. 21-01310
)
Applicant for Security Clearance)

Appearances

For Government: Daniel P. O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

04/07/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by her delinquent debt. Clearance is denied.

Statement of the Case

On July 5, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On August 25, 2021, Applicant answered the SOR, admitting all of the allegations and requesting a hearing, whereupon the case was assigned to me on October 31, 2022. On December 13, 2022, the Defense Office of Hearings and Appeals scheduled the hearing for January 10, 2023. I held the hearing as scheduled, incorporating six

Government Exhibits into the record as Government Exhibits (GE) 1 to GE 6, and considering the testimony of Applicant. Also, I incorporated a copy of the discovery letter mailed from Department Counsel to Applicant, as Hearing Exhibit I. At the close of the record, I left the record open for Applicant to submit exhibits. Within the time allotted, she submitted two exhibits that I incorporated into the record as Applicant's Exhibits (AE) A and B. The transcript (Tr.) was received on January 25, 2023.

Findings of Fact

Applicant is a 37-year-old single woman. She is a high school graduate and has taken some college courses. She is a secretary who has been working for various employers in this line of work since 2015, and has been working with her current employer since December 2021. (Tr. 13)

In the late 2010s, Applicant worked as the secretary in a chiropractor's office. (Tr. 20) She was laid off in March 2020 after the pandemic began and was either unemployed or underemployed for the next 20 months. (Tr. 18) During this time, she received rental assistance and unemployment compensation. (Tr. 18)

Applicant has approximately \$25,000 of delinquent debt. The debts alleged in subparagraphs 1.a, and 1.f through 1.k are delinquent medical bills, totaling \$3,800. Subparagraph 1.b is the deficiency from a repossessed car, totaling \$7,600, subparagraphs 1.c and 1.d, totaling \$15,000, are delinquent student loans, and subparagraph 1.e, totaling \$970, is a delinquent credit card. She incurred these bills primarily because through most of her career, she has been living paycheck to paycheck, struggling to pay bills. (Tr. 29) During her lengthy unemployment during the pandemic, her struggle to pay bills devolved into a struggle to avoid eviction, as she had to apply for rental assistance from her county of residence. (Tr. 18) While unemployed, she briefly worked as a grocery delivery driver, but had to stop when her car broke down. (Tr. 18)

Applicant incurred the medical bills because she did not have medical or dental insurance for several years. (Tr. 16) When she periodically fell ill, she did not want to risk her health, so she would go to the emergency room. (Tr. 22) Unable to pay the bills when she received them, she would set them to the side to pay when she could afford them, but then, forget about them. Applicant intends to begin paying these bills after she satisfies more pressing ones. (Tr. 23)

Applicant purchased a car in 2016. The monthly car note was \$315. (Tr. 24) Often unable to pay the full amount, she frequently made partial monthly payments. (Tr. 24) Gradually, the delinquencies from these partial payments "started to add up." (Tr. 24) In March 2021, the car was repossessed. The amount alleged delinquent in SOR subparagraph 1.b totals the amount delinquent at the time of the repossession. Since the repossession, the holder of the car note resold the car. The remaining deficiency totals \$2,722. (GE A) Applicant has not yet begun a payment plan to satisfy this debt. (Tr. 25)

Applicant originally opened her student loan accounts in 2005. As of July 27, 2021, she was paying the creditor \$5.00 per month under a payment plan. (Answer at 1) As of January 2023, there was a government-mandated pause on federal student loan payments. (AE B)

Subparagraph 1.e, totaling \$970, is a credit card. She has not satisfied the delinquency, yet, but has been in contact with the creditor. (Tr. 16)

Applicant does not maintain a budget and continues to live paycheck to paycheck. (Tr. 29) She tracks her bills with a wall calendar to ensure that every time she gets paid, she makes a bill payment. (Tr. 30) She has a job as a bartender to supplement her income. (Tr. 29) She did not submit a copy of the wall calendar. Recently, she took a part-time job. The salary from this job is unknown from the record.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 ¶ 1(d) requires that “[a]ny 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. 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 to obtain a favorable security decision.

Analysis

Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18)

Applicant’s history of delinquent debts triggers the application of AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Although Applicant was already struggling to pay her debts before losing her job after the pandemic began in 2020, the subsequent 20-month unemployment exacerbated her financial problems. Currently, her delinquent student loans do not pose a security risk because they are under a government-mandated pause. I resolve subparagraphs 1.c and 1.d in her favor.

Although Applicant provided evidence that her automobile loan delinquency was less than alleged, she did not provide evidence of any steps to begin satisfying it. Similarly, she provided no evidence of any payment plans for satisfying the other remaining delinquencies. In addition, she does not maintain a budget, and her testimony that she uses a calendar to track her expenses and payments was unsupported by documentary evidence. Absent concrete proof of a demonstrated track record of financial reform, promises to satisfy debts have limited probative value. Consequently, Applicant’s financial struggles that were perpetuated by the pandemic trigger the partial application of AG ¶ 20(b), but none of the remaining mitigating conditions apply. I conclude Applicant has failed to mitigate the financial considerations security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Although circumstances beyond Applicant's control partially contributed to her financial problems, she provided minimal evidence establishing what bills she is currently paying, or when she will begin paying the delinquencies. Under these circumstances, I conclude that she has not mitigated the security concern.

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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e – 1.k:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge