



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



In the matter of:)
)
) ISCR Case No. 22-01866
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*
09/27/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has several thousand dollars in ongoing, delinquent consumer debt. She indicated in her response to the Statement of Reasons that she entered a credit counseling program. However, she provided no documentation to detail the program, and she set forth no evidence to detail her efforts to resolve her debts. She did not provide sufficient evidence to mitigate financial considerations security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 9, 2022. On November 14, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. (Item 1) The CAS issued the SOR under Executive Order 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 Security Executive Agent

Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 11, 2023, and elected to have her case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, instead of a hearing. On April 27, 2023, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA mailed the FORM to Applicant the next day, and she received it on May 3, 2023. She was given 30 days from receipt of the FORM to submit materials in response, and to object to the Government's evidence. Applicant did not respond to the FORM.

The case was assigned to me on August 29, 2023. Government Items 1 and 2, the SOR and the Answer, are the pleadings in the case. Government Items 3 through 6 are admitted without objection.

Findings of Fact

In Applicant's answer to the SOR, she admitted the 12 SOR debts (§§ 1.a through 1.l) and provided a narrative statement. Her admissions are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is 35 years old. She and her husband married in 2017. She has a young daughter with her husband and a teenage stepson. She has worked for a marketing company since 2019. She has not held a prior clearance. (Item 3)

Applicant did not disclose any delinquent debts on her SCA but discussed them in her March 2022 background interview. She was given an opportunity after her background interview to provide proof that some of her debts were resolved but she did not do so. (Items 3, 4)

The SOR debts, mostly consumer credit accounts, are detailed in credit reports from March 2022 and October 2022. (Items 5, 6) As alleged, the SOR debts total about \$34,000. Applicant admitted all the SOR debts in her Answer. (Items 1, 2)

Applicant explains that she incurred her debts for a variety of reasons, including job and salary changes, family changes, and health issues beginning in about 2015. She does not elaborate. She asserts that she has enrolled all her debts in a debt-relief program. Some of them, she states, were current when they were enrolled in the program but were added to allow her family to better live within their means and reduce monthly payments. She asserts that her "finances have been more in control" as the debt-relief program has allowed her to "focus on more correct spending habits." (Item 2) She provides no details and no documents, particularly to show that any of the SOR debts have been or are being paid or resolved.

SOR ¶ 1.a (\$1,232 total balance, \$267 past-due) is a past-due consumer credit account with a bank. (Item 5)

SOR ¶ 1.b (\$642) is an account placed for collection by a bank. (Items 5, 6)

SOR ¶ 1.c (\$11,940) is an account that has been charged off by a bank. (Items 5, 6).

SOR ¶ 1.d (\$175) is a past-due account. (Item 5)

SOR ¶ 1.e (\$655 total balance, \$127 past due) is a past-due account with a bank. (Item 5)

SOR ¶ 1.f (\$4,070) is an account that has been charged off by a bank. Applicant now owes \$3,928. (Items 5, 6)

SOR ¶ 1.g (\$919 total balance, \$107 past due) is a past-due account with a bank. (Item 5)

SOR ¶ 1.h (\$728 total balance, \$160 past due) is a past-due account with a bank. (Item 5)

SOR ¶ 1.i (\$2,215 total balance, \$263 past due) is a past-due account with a bank. (Item 5)

SOR ¶¶ 1.j (\$280) and 1.k (\$193) are past-due medical accounts reported for collection. (Item 6)

SOR ¶ 1.l (\$15,871) is a timeshare account with a hotel, an account that has been charged off. (Item 4 at 5, Item 6)

As noted, Applicant provided no documentation with her SOR response about her efforts to pay or resolve any of these accounts, nor did she address such efforts in her answer. She noted that she is in a debt relief program, but provided no information about its terms, requirements, or expected results. She provided no information about her current assets, income stream, or expenses. She did not respond to the FORM, so she provided no updated information about her financial stability.

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 the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be

irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 incurred a variety of consumer and other delinquencies in recent years. The debts are admitted and established by credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

The following mitigating conditions under AG ¶ 20 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, 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 delinquent debts are ongoing and unresolved. She did not establish that they occurred due to isolated circumstances or that they no longer cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant refers to a variety of circumstances that impacted her family's finances, including job and salary changes, family changes, and a health situation in 2015. However, she did not provide enough details for me to find that her finances were impacted by circumstances beyond her control. Moreover, she did not establish that she took reasonable action under the circumstances to address her debts. AG ¶ 20(b) does not fully apply.

Applicant indicated that she retained a debt-relief service to assist in returning her to financial stability. She asserted that some of the debts in the SOR (and in the debt service) are now current. Yet she provided no details and no corroborating documentation about the debt service, nor did she provide sufficient information to establish that her debts are being resolved or are under control. AG ¶ 20(c) does not apply.

Whether through the debt-relief service or otherwise, Applicant did not establish that she has undertaken good-faith efforts to pay or resolve her delinquent debts. This is typically accomplished by documentary evidence of a track record of steady payments towards her debts. Applicant did not provide sufficient evidence of such information. AG ¶ 20(d) 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 the 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(a), 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.

Since Applicant did not request a hearing, I did not have the opportunity to question her about her debts, her efforts and ability to resolve them, or about her overall financial stability. I also did not have the opportunity to view her demeanor and thus to assess her credibility. She did not provide any documentation with her SOR response and did not respond to the FORM, so she provided no additional evidence in mitigation. Applicant did not provide sufficient evidence to mitigate the security concern shown by her delinquent debts. This does not mean that she cannot show such evidence in the future should she reapply for access to classified information. Overall, the record evidence leaves me with questions and doubts as to her eligibility for a security clearance.

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

Braden M. Murphy
Administrative Judge