



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



| | | |
|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 23-01670 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 21, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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) implemented by the DoD on June 8, 2017.

Applicant submitted a response to the SOR (Answer) on September 27, 2023, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on November 9, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the

security concerns. Applicant received the FORM on December 5, 2023, and she did not respond. The case was assigned to me on March 6, 2024. The Government's documents identified as Items 1 through 12 are admitted in evidence without objection.

SOR Amendment

Item 13 reflects that Applicant filed chapter 13 bankruptcy, not chapter 7 bankruptcy, in May 2009. I hereby *sua sponte* amend SOR ¶ 1.b, pursuant to ¶ E3.1.17 of the Directive, to strike the number "7" and replace it with "13."

Findings of Fact

Applicant admitted all the SOR allegations in her Answer, with explanations. She is 52 years old. She married in 2001, divorced in 2003, remarried in 2008, divorced in 2016, remarried in 2017, and divorced in 2020. She has one child, age 29. (Items 1-3, 12)

Applicant attended various colleges between 1989 and 2009, and she earned certificates in 1998 and 2004 and an associate degree in 2006. She worked for various companies since April 1997, except for a brief period of unemployment from July 2018 to August 2018. Since July 2020, she has worked as a security specialist for her employer, a defense contractor. She has never held a security clearance. (Items 3, 12)

Applicant filed chapter 7 bankruptcy three times, in August 2005, February 2016, and November 2016. Her 2005 and November 2016 bankruptcies were discharged in November 2005 and March 2017, respectively, and her February 2016 bankruptcy was closed without discharge in June 2016 because she received a discharge in a prior case commenced before statutory time limitations. She also filed chapter 13 bankruptcy three times, in May 2009, July 2010, and September 2018. Her 2009 bankruptcy was dismissed in July 2010, her 2010 bankruptcy was discharged in March 2013, and her 2018 bankruptcy was closed without discharge in April 2023 because she received a discharge in a prior case commenced before statutory time limitations. (SOR ¶¶ 1.a-1.f) (Items 2-12)

In her Answer, Applicant attributed her chapter 7 bankruptcy in 2005 to "a home invasion, my home was broken into 8 times." She purchased her first home at age 27 and she was unaware of the responsibilities that accompanied home ownership. She stated, "I couldn't afford to keep up the maintenance or repairs afterwards. So[,] I voluntarily chose to vacate the home and file bankruptcy." She could not recall her 2009 bankruptcy case. She attributed her chapter 13 bankruptcy in 2010 to debts from her previous marriage and falling behind on paying her debts due to medical illness.

Applicant indicated during her November 2020 background interview that she claimed \$120,000 in liabilities in her chapter 7 bankruptcy in 2016. She attributed this bankruptcy to taking on more credit than she should have, which then led to her inability to pay her debts when they were due. In her Answer, she also stated that she accrued debt from her previous marriage, to include a mortgage for a home she and her then-

spouse purchased, and when she attempted to sell the home, he was uncooperative and she was forced to file bankruptcy. She stated that the February 2016 bankruptcy case was “[d]ismissed due to a clerical error” because her attorney failed to file paperwork so she properly refiled in November 2016. (Items 3, 12)

In her Answer and background interview, Applicant attributes her chapter 13 bankruptcy in 2018 to accruing debt from her previous marriage, her medical issues, financially assisting her son after he was in a motorcycle accident, losing a parent during the COVID-19 pandemic, and opening new accounts to improve her credit score. She acknowledged she lost control of her finances. (Item 12)

Applicant also has six delinquent consumer debts totaling approximately \$12,516. (SOR ¶¶ 1.g-1.l) The allegations are established by Applicant’s admissions in her Answer, September 2020 security clearance application (SCA), August 2022 interview with an authorized DoD background investigator, bankruptcy records, and credit bureau reports (CBRs) from March 2023 and August 2023. (Items 2-12) She stated in her Answer that she incurred the debts in SOR ¶¶ 1.g-1.j and 1.l during the COVID-19 pandemic. She also stated that she was disputing all her debts or making arrangements to pay the debt in SOR ¶ 1.l. She failed to provide documentation to corroborate her claims. There is no evidence in the record that she has received financial counseling.

Policies

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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 describes conditions that could raise a security concern and may be disqualifying. I considered as relevant AG ¶ 19(a), an “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(e), “consistent spending beyond one’s means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.” Applicant has a history of not paying her debts. Her multiple bankruptcy cases indicate consistent spending beyond her means. AG ¶¶ 19(a), 19(c), and 19(e) apply.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(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;

(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.

Conditions beyond Applicant's control contributed to her financial issues. However, she has failed to show that she acted responsibly under her circumstances. She has not provided documentation of her efforts to address, pay, or dispute her delinquent debts. There is no evidence that she has received credit counseling. Her multiple bankruptcy cases and continued financial problems demonstrate that there are not clear indications her financial problems are being resolved or are under control. I find that Applicant's ongoing financial problems continue to cast doubt on her current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are not established.

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 this whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude 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 |
| Subparagraph 1.a - 1.i: | 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 a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge