



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



In the matter of:)	
)	
)	ISCR Case No. 23-00924
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations and drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 10, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and 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 an undated response to the SOR (Answer) 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 21, 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 6 are admitted in evidence without objection.

Findings of Fact

Applicant admitted all the SOR allegations in her Answer, with explanations. She is 47 years old. She married in 2003, divorced in 2006, remarried in 2012, divorced in 2015, and remarried in 2019. She has five children, ages 28, 27, 23, 18, and 13, and two stepchildren, ages 18 and 15. She resides in state A with her spouse in his home. (Items 1-3)

Applicant graduated from high school in 1994. She worked for various non-defense contractors from May 2005 to May 2019. She has since worked as a project manager for her employer, a defense contractor. She has never held a security clearance. (Items 1-3)

Applicant used marijuana, with varying frequency, from March 2020 to at least September 2022. (SOR ¶ 1.a) She disclosed information regarding her marijuana use on her June 2022 security clearance application (SCA). She was issued a medical marijuana card by state A in approximately March 2020, for "PTSD, Anxiety & Physical Trauma" pain management due to two car accidents. At the time, she sought from her pain-management physician an alternative method of treating her chronic pain than prescribed oxycodone or muscle relaxers. She was referred to a physician who authorized and provided her with a medical marijuana card to purchase from a dispensary and micro dose, as needed. She stated in her SCA "To obtain clearance I can revisit pain management for other methods of treatment that are federally legal." She was aware that while marijuana was legal in state A, it remained federally illegal. In her Answer, she stated that she allowed her marijuana card to expire, she had not since purchased marijuana, and she did not have any intention to purchase marijuana in the future. (Items 2-3)

Applicant has nine delinquent consumer debts totaling approximately \$18,500. (SOR ¶¶ 2.a-2.i) She also filed chapter 7 bankruptcy in September 2012, and her bankruptcy was discharged in January 2013. (SOR ¶ 2.j) The allegations are established by Applicant's admissions in her Answer, SCA, and credit bureau reports (CBRs) from July 2022, January 2023, and November 2023. (Items 2-6)

Applicant stated in her Answer that she "did not have enough knowledge prior to [her bankruptcy] filing and deemed it a mistake." She further stated, "I have worked to pay most of the debt that was impacted." She disclosed the debt in SOR ¶ 2.a, an auto loan in collection for \$11,470, on her SCA. She incurred this debt in approximately 2018, when she totaled her car in an accident and consequently owed more on the loan than the car was worth. She was awaiting a settlement, which she intended to use to resolve this debt. (Item 3) In her Answer, she stated that she was working with the

creditors to pay the debts in SOR ¶¶ 2.a-2.b, 2.e, and 2.g-2.i. She also stated that she established payment arrangements for the debts in SOR ¶¶ 2.c-2.d and 2.f, and she anticipated paying them by August 2023. She did not 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 H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: "(a) any substance misuse . . . ;" and "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant used marijuana from March 2020 to September 2022. AG ¶¶ 25(a) and 25(c) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant self-reported information about her marijuana use on her SCA. She acknowledged that her use of marijuana violated federal law, despite its legality in her state and her possession of a medical marijuana card. She has allowed her card to expire and intends to explore alternative options to manage her pain. She expressed her intent to abstain from marijuana in her Answer. AG ¶ 26(b) applies. However, more time without marijuana use is necessary to establish her future abstinence from marijuana use and possession. None of the remaining mitigating conditions are established.

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," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant has a history of not paying her debts. AG ¶¶ 19(a) and 19(c) 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Conditions beyond Applicant's control contributed to her delinquent debts; however, she failed to show that she acted responsibly under her circumstances. She has not provided documentation of her efforts to address or pay her delinquent debts. There is no evidence that she has received credit counseling. There are not clear indications that 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), and 20(d) 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 H and 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 and drug involvement and substance misuse 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 H:
Subparagraph 1.a:

AGAINST APPLICANT
Against Applicant

Paragraph 2, Guideline H:
Subparagraphs 2.a - 2.j:

AGAINST APPLICANT
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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge