



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



In the matter of:)
)
) ISCR Case No. 22-01668
)
Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

07/19/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant’s debts were caused by a significant loss of income caused by an employment downturn, and she has been making responsible, good-faith efforts to resolve them. Under these circumstances, I conclude she has mitigated the security concerns. Clearance is granted.

Statement of the Case

On September 12, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) 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 CAS 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 March 13, 2023, Applicant answered the SOR, admitting the allegations and requested a hearing, whereupon the case was assigned to me on January 4, 2024. On February 6, 2024, the Defense Office of Hearings and Appeals issued a notice of video teleconference hearing, scheduling the hearing on March 12, 2024. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1 – GE 4), eight exhibits from Applicant (Applicant’s exhibit (AE) A through AE H), and Applicant’s testimony. At the close of the hearing, I left the record open for 30 days to allow Applicant the opportunity to supplement her exhibits. (Tr. 75) On April 12, 2024, she submitted three exhibits that I incorporated into the record as AE I through AE K. The transcript (Tr.) was received on March 22, 2024.

Preliminary Ruling

At the close of the hearing, Department Counsel moved to amend the SOR to conform to Applicant’s testimony, as follows:

1.h. You are indebted to the federal government for delinquent taxes in the approximate amount of \$27,000.

I granted the motion over Applicant’s objection. (Tr. 76)

Findings of Fact

Applicant is a 56-year-old single woman. She earned a bachelor’s degree in international studies in 1989. (AE A) For the past 27 years, she has worked for the federal government in various capacities. (Tr. 16; Answer) Since 2013, she has been working as an independent contractor producing training videos for the military. (Tr. 16-17; AE A) She has held a security clearance for 27 years. (Answer at 5)

Through approximately 2013, Applicant’s career was successful. She was one of the highest-paid employees of her company, earning approximately \$166,000 per year. (AE B; Answer at 1) In 2013, budget cuts led to her being laid off. (Answer at 1) Initially, Applicant was able to somewhat offset the financial loss caused by the layoff through working as an independent contractor. (Answer at 1) Over the next two years, however, jobs became increasingly scarce, and the pay offered for the services that she rendered decreased considerably compared to what she was previously paid. In addition, the industry changed, as companies lowered their pay rates for the type of services that she provided. (AE B) Applicant looked for jobs outside of her field but was unsuccessful because it was difficult as a woman in her fifties “trying to find a job outside [the] world with [her] skills and abilities.” (AE I at 2) At or about the time Applicant’s salary began drastically decreasing, she was diagnosed with high blood pressure. Unable to afford health insurance after the salary decrease, she had to pay much more out of pocket than she did previously, further straining her finances. (Tr. 72)

In 2016, Applicant lost two of her most lucrative remaining contracts, triggering a financial crisis from which she has yet to recover. (Answer at 1) Between 2017 and 2022,

her adjusted gross income decreased by approximately 90 percent of what she had earned in 2013. (AE B) In November 2017, Applicant attended credit counseling. (AE C at 2; AE K) Although the counselor recommended that she file for bankruptcy protection, she opted not to pursue it because of concerns it could cause her to lose her security clearance. (AE I at 1) Applicant then applied for consolidation loans from two different companies on two separate occasions, most recently in 2022. (Answer at 1; AE D) Each time, her application was rejected. (Answer at 1; AE D) Applicant also considered retaining a credit repair agency to negotiate settlements on her behalf. (Answer at 1) She ultimately did not retain this company because “it sounded shady . . . especially because they wouldn’t tell [her] what their fees were.” (Answer at 1)

As of September 2022, Applicant had incurred \$94,000 of delinquent debt, as set forth in the SOR. Subparagraph 1.a, totaling \$30,445, is the second mortgage that she used to help finance the purchase of a home. (Tr. 69) She sold the home in approximately 2018 after her finances had taken a turn for the worse. (Tr. 32, 70) She thought that the second mortgage was satisfied through the sale of the home. (Tr. 70) Applicant contacted the creditor in January 2023 to negotiate a settlement. (Tr. 52) The creditor offered to resolve the debt if she paid \$15,000. Applicant was unable to afford this amount, and it remains outstanding. (Tr. 52) She did not take steps to resolve this debt earlier because “there were so many other things that were going on” with her finances. (Tr. 52)

The debt alleged in subparagraph 1.b is a delinquent credit card, totaling \$18,385. (Tr. 53) It became delinquent in the latter part of 2016 at or about the time Applicant’s income drastically decreased. (Tr. 53) Applicant contacted the creditor to negotiate a settlement. The creditor offered to settle the debt in exchange for Applicant’s paying 50 percent of the loan. (Tr. 54) Applicant could not afford to make this payment. Currently, the debt remains outstanding.

The debt alleged in subparagraph 1.d is a credit card totaling \$7,599. Applicant settled this debt with a lump-sum payment of \$5,699. (Answer at 6; AE F)

The debt alleged in subparagraph 1.e, totaling \$926, is a credit card. In March 2023, Applicant arranged to settle this debt for \$526; however, she was unable to follow through on the settlement plan after she had to purchase tires for her car. (Tr. 26) It remains outstanding.

The debt alleged in subparagraph 1.f, totaling \$474, is a credit card. It became delinquent in 2017. (Tr. 60) Applicant has made no plans to satisfy it. (Tr. 26)

Applicant owes the debt alleged in subparagraph 1.g, totaling \$27,424, to a credit union. She originally contacted this creditor in 2017 to attempt to settle this account. When the creditor told her that it was going to write off this debt, she ceased attempts at resolving it. (Tr. 61)

Applicant owes the federal government \$27,000 in delinquent income taxes. (Tr. 64) She incurred this delinquency after she borrowed money from her retirement

investment account in response to her employment crisis in the mid-2010s and failed to deposit the money back into the account to prevent incurring excessive interest and penalties. (Tr. 65) Applicant entered a payment plan to resolve the IRS delinquency. The date that she began making payments is unclear from the record. She began falling behind on the payments in 2023. (Tr. 66)

Unable to make the IRS payments, Applicant applied for and was approved for a hardship program. Under this program, she will again apply for Chapter 7 bankruptcy protection. (AE I at 2) While the Chapter 7 plan is proceeding, her delinquent tax payments will be stayed. With the help of her bankruptcy attorney, she will attempt to obtain a discharge of tax debts predating tax year 2021. Applicant anticipates that once her tax interest and penalties and her commercial debts are discharged, she will be able to pay the remainder of the tax delinquency within six months. (AE I at 2)

In February 2023, Applicant satisfied a debt totaling \$470, owed to a cell phone company, that is unlisted in the SOR. Currently, Applicant has between \$30,000 and \$40,000 invested in a retirement savings account. (Tr. 36) She owns two cars that are paid off. (Tr. 36) Because of her age, she is close to retirement, and she does not want to withdraw any money from her retirement accounts. Applicant supplements her income through part-time work with a restaurant delivery service and a grocery delivery service. The amount that she earns with this work varies by season. Most of the time, she does not earn that much money; however, during holidays she sometimes earns up to \$800 per week. (Tr. 27, 40)

Applicant is highly respected on the job. Per a coworker, she “demonstrates unwavering dedication and professionalism in her work, [and] is punctual, reliable, and always willing to go above and beyond to ensure tasks are completed to the highest standards.” (AE J)

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 several 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.

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.

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 financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting’s financial obligations.” Applicant’s tax delinquency triggers the application of AG ¶ 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax, as required.”

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, 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems are ongoing. Consequently, AG ¶ 20(a) does not apply.

Applicant lost her job in 2013. Although she attempted to offset the lost income through independent contractor work, she was never able to remotely generate the income that she made before the layoff, as her income continued to decrease, reaching its nadir in 2022 when she was earning only ten percent of what she earned before the layoff. Applicant's financial problems were compounded by the loss of health insurance, leading to increased out-of-pocket medical expenses that coincided with the decrease in income.

Through Applicant's financial struggles, she consistently took steps to mitigate them, including selling her home, applying for consolidation loans, going to credit counseling, consulting debt reduction companies, and performing part-time work. She has managed to reduce her SOR debt by \$5,699 through satisfying the debt alleged in subparagraph 1.d, and she satisfied a \$470 delinquency that was not alleged in the SOR. She is now in the process of filing for bankruptcy protection. Under these circumstances, AG ¶ 20(b) applies.

Applicant continues to struggle with her financial well being. Selling her house did not entirely eliminate the mortgage debt, she has not consistently made payments on her income tax payment plan, her application for a consolidation loan was rejected, and the decision to borrow money from her retirement fund aggravated her problems, as she was unable to pay the resulting tax penalty. Consequently, AG ¶¶ 20(d) and 20(g) are

applicable only to the extent that she initiated payment plans. Nevertheless, I conclude that Applicant acted responsibly given her limited resources. (See, e.g., Case No. 08-06567 at 3-4 (App. Bd. Oct. 29, 2009)) I am unable to discern any other reasonable actions she could have taken to satisfy her creditors in light of her limited financial resources. Ultimately, although Applicant has made limited progress in satisfying her debt, the good-faith nature of her efforts, together with the fact that the debts were caused by circumstances beyond her control, lead me to conclude that Applicant has mitigated the security concern.

Whole-Person Concept

In addition to the mitigating conditions, I also considered the lengthy time that Applicant has held a security clearance, and her strong work performance. Moreover, I was particularly cognizant of the conundrum Applicant faced as an aging employee whose skill-set no longer generates the income she had earned previously in her career. Upon considering all the mitigating and disqualifying conditions in the context of the whole-person concept, I conclude Applicant has mitigated the 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:

FOR APPLICANT

Subparagraphs 1.a – 1.h:

For Applicant

Conclusion

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge