



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 13-01187
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has two charged-off student loans totaling more than \$22,000. She is almost \$4,000 past due on other student loans totaling approximately \$71,000 and owes more than \$4,000 on seven collection accounts, all alleged in the Statement of Reasons (SOR). None of the delinquent obligations have been paid. The financial considerations security concerns remain. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on December 9, 2013, the DoD issued an SOR detailing financial considerations security concerns. DoD

¹ Executive Order 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) effective within the DoD on September 1, 2006.

adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance due to financial considerations. On December 26, 2013, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated January 31, 2014. The FORM contained eight attachments. On February 19, 2014, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to FORM are due 30 days after receipt of the FORM. Applicant's response was due on March 21, 2014. As of April 7, 2014, no response had been received. On April 9, 2014, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the debts listed in the SOR, and her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 56-year-old logistics management analysis supervisor who has worked for a defense contractor since February 2010, and seeks to maintain a secret security clearance. No information as to her duty performance was submitted. She is married and has two children ages 26 and 33. There is no information as to her husband's occupation. The record does not show her or her husband's annual income nor does it contain any information as to monthly expenses.

Applicant co-signed on student loans for her daughter. In her August 2013 Personal Subject Interview (PSI), she indicated the student loans totaled approximately \$89,000. Two student loans (SOR 1.a and 1.b) totaling approximately \$22,000 were charged off. The last actions taken on these accounts were in July 2009 and November 2010. (Item 7)

The student loans were obtained for Applicant's daughter to attend a university. (Item 8) In 2011, her daughter divorced, left the university, and moved in with Applicant. Her daughter's child also moved in with Applicant. (Item 8) Additional student loans became due in January 2012, six months after her daughter left school. Approximately \$4,000 is more than 150 days past due on two additional student loans (SOR 1.c and 1.d) that total approximately \$71,000. Applicant hopes her daughter will be able to start repaying the student loans once she obtains full-time employment. (Item 8)

Applicant has a \$3,048 credit card collection account (SOR 1.e). In 2011, when her daughter and grandchild moved into her home, Applicant was unable to pay her mortgage, utilities, car payment, and food expenses while making payments on her various other accounts. She stopped paying the other accounts. (Item 8) She owes \$649 on a telephone company collection account (SOR 1.f).

In 2012, Applicant received medical treatment which was paid in part by her health insurance. She had five medical accounts (SOR 1.g through 1.k) totaling approximately \$700 placed for collection. In May 2013, she was able to settle a number of credit card accounts not listed in the SOR. There is no evidence she has received financial counseling or has had recent contact with her creditors on her collection accounts or the past-due student loans.

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 must 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 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 interests of 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 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.

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 Executive Order (EO) 10865 provides that 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

Adjudicative Guideline (AG) ¶18 articulates the security concerns relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant's history of delinquent debt is documented in her credit reports, her PSI, and her SOR response. Applicant co-signed on two student loans that were charged off in 2009 and 2010. She is more than 150 days past due on two additional student loans that total in excess of \$70,000. She has seven additional collection accounts, three which have balances of \$100 or less. The evidence supports application of disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations.”

Five Financial Considerations 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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Because Applicant has multiple delinquent debts and her financial problems are continuing in nature, she receives minimal application of the mitigating condition listed in AG ¶ 20(a). Even the three small collection accounts of less than \$100 each have yet to be paid. Additionally, there is no evidence Applicant has had recent communications with the creditors of her delinquent accounts. Applicant's handling of her finances, under the circumstances, casts doubt on her current reliability, trustworthiness, or good judgment.

Likewise, Applicant receives only limited application of the mitigating condition listed in AG ¶ 20(b). Her daughter and grandchild moved in with her in 2011, which increased her daily living expenses. There is little documentary evidence establishing Applicant was substantially affected by these circumstances other than her statement that she was unable to pay her other accounts after she paid her mortgage, car payment, utilities, and food expenses. It is noted the two charged-off student loans were charged off one or two years before her daughter and grandchild moved in with her. There is no evidence Applicant has been recently unemployed. She has made no payments on her delinquent obligations. She failed to resolve her debts and failed to reduce her delinquencies.

The mitigating condition listed in AG ¶ 20(c) does not apply because there is no evidence of financial counseling, nor is there any indication that the delinquent debts listed in the SOR are being addressed.

The mitigating condition listed in AG ¶ 20(d) does not apply because, to date, Applicant has made no effort to address the delinquent SOR accounts. There is no documentary evidence that she contacted any of her creditors and tried to arrange

repayment plans. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has admitted the debts. She disputes the telephone collection account (SOR 1.f, \$649), but has not provided documented proof to substantiate the basis of the disputed account.

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(a):

- (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.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate her demeanor, appearance, or credibility. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for her in these matters, there is no evidence of payment on her delinquent debts. Her failure to repay her creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about her fitness to hold a security clearance.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debts. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain.

I must reasonably consider the entirety of Applicant's financial situation and her actions. She is not required to make payment on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. In 2013, she was able to settle

other credit card accounts not listed in the SOR. The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but it is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her past-due obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E 3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: **AGAINST APPLICANT**

Subparagraphs 1.a – 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 national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge