



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-01653
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

12/22/2014

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not presented sufficient information to mitigate financial security concerns.

Statement of the Case

On October 1, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to receive a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated June 4, 2014, detailing security concerns for financial considerations under Guideline F. The action was taken under 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 in the DOD on September 1, 2006.

Applicant answered the SOR on August 4, 2014. She denied three delinquent debts (SOR 1.a, 1.b, 1.c), noting that the debt at 1.a was paid, and that she did not have any information or knowledge about the debts at 1.b and 1.c. She admitted the other 21 delinquent debts. Department Counsel was prepared to proceed on September 23, 2014, and the case was assigned to me on September 26, 2014. DOD issued a notice of hearing on October 24, 2014, scheduling a hearing for November 20, 2014. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant and one witness testified. Applicant submitted two documents that I marked and admitted into the record without objection as Applicant Exhibit (AX) A and B. I kept the record open for Applicant to submit additional documents. Applicant timely submitted two documents that I marked and admitted into the record as AX C and D. Department Counsel had no objection to the admission of the documents. (GX 5, e-mail, dated December 18, 2014) I received the transcript of the hearing (Tr.) on December 4, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 31-year-old high school graduate. She has taken some college level courses. She has been employed by a defense contractor as an aircraft worker since October 2007. Applicant served on active duty in the Navy as an airman from August 2003 until August 2007, and was honorably discharged as a petty officer third class (E-4). She has never married but is living with her life partner and the partner's two children and one grandchild. She is the sole source of support for the family. (Tr. 12-16; GX 1, e-QIP, dated October 1, 2013)

The SOR alleges, Applicant admits, and a credit report (GX 3, dated November 28, 2013) confirms approximately \$15,000 in delinquent debts for Applicant. The delinquent debts rose from overpayment of unemployment compensation, unpaid educational loans, unpaid consumer credit, unpaid credit cards, unpaid utilities bills, and unpaid medical expenses. The delinquent debt from educational loans totals approximately \$6,200, and the medical debts total approximately \$2,500, accounting for over half of the amount of the delinquent debt.

Applicant was unable to pay her debts and catch up with debts that already existed when she left active duty in August 2007. Some of Applicant's debts became delinquent before she left the Navy, but the majority of her debts became delinquent after she left the Navy. She was unemployed from August 2007 until October 2007 when she was hired as an aircraft handler by a defense contractor. When she did find employment, her salary was not as much as when she was on active duty. She lost track of her debts and could not pay her current or past-due debts. She was continuously employed on the west coast by the defense contractor until October 2010 when she was moved by the company to the east coast to continue her employment

with them in the area in which she grew up. She is still employed by the defense contractor as an aircraft handler. She has been continuously employed since October 2007. (Tr. 20-23)

When Applicant was unemployed after leaving the Navy, she received unemployment compensation which she used for rent and other living expenses. She received more unemployment benefit than she was entitled. The state entered a judgment against Applicant for the overpayment. Applicant satisfied the judgment by November 2010. (Tr. 24-26; AX A, Acknowledgment of Satisfaction of Judgment, dated November 29, 2010)

Applicant admits that she owes delinquent student loans to a university (SOR 1.b) and the government student loan guarantor (SOR 1.f). She used the loans to supplement her educational expenses not covered by the G.I. bill. At hearing, she stated that she disputed the charged-off debt to a university for \$2,782 at SOR 1.b as unknown. In her subject interview, she admitted a debt to an on-line university for \$2,782. She stated that she intended to contact the university to establish a payment plan. After the discussion of the debt at the hearing, Applicant understood the debt and the identity of the university. Applicant did not present any information to establish that payments were made on this debt. (Tr. 26-30)

At the hearing, Applicant presented a settlement offer from the government student loan guarantor. She did not present any documentation to establish any payments made under this plan. (Tr. 47-48; AX B, Letter, dated April 16, 2012)

After the hearing, Applicant presented documentation that she made \$10 payments on the \$439 delinquent debt at SOR 1.j, the \$289 delinquent debt at SOR 1.l, and the \$39 debt at SOR 1.x. (AX C, Money Order Receipts, dated December 15, 2014)

Applicant's life-partner testified that Applicant has called some of the creditors to make payment arrangements. The creditors recommended that Applicant make some payments in any amount on her debts. The life-partner recommended to Applicant that she pay the smaller medical debts first before starting to pay the larger debts. She further testified that Applicant is a good person who wants to clear her credit history. (Tr. 41-43)

Applicant's life-partner presented a Statement for the Record that Applicant understands why her credit is under review. As an active duty sailor, Applicant was sheltered from the consequences of her late payment of delinquent debts. She never reviewed her credit history. The security clearance investigation showed her the severity of her financial problems and her poor financial judgment. The life-partner stated that Applicant has received payment arrangements from creditors and asked for time for Applicant to resolve her financial problems. (AX D, Statement, undated).

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 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 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 in seeking 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 the 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

Financial Considerations

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly 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 under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Applicant incurred debts when she left active duty, was unemployed for three months, and her income was less than she received on active duty. The delinquent debts, as established by Applicant's statements and a credit report, raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates a history of both an inability and an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (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 problems 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 has initiated a good-faith effort to repay the 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 action taken to resolve the issue.

These mitigating conditions do not apply. Applicant encountered financial issues when she left active duty. She had some delinquent debt before she left active duty, but she incurred additional delinquent debt after leaving active duty and she lost track of the status of her finances. She was unemployed for three months drawing unemployment compensation. When she found a job after three months, her income was not as much as her active duty income. While she had a short period of unemployment, she has been continually employed since October 2007. Her delinquent debt did not happen under unusual or unique circumstances that are unlikely to recur. She had delinquent debt from unemployment but she received unemployment compensation and she just lost track of how and what she owed, and she did not make payments or seek payment arrangements for her debts. All of her financial issues were within her control to resolve. AG ¶¶ 20(a) and 20(b) do not apply

Applicant paid the judgment resulting from an overpayment of her unemployment compensation. However, the token payments of \$10 on three debts do not establish a good-faith effort to resolve debt. For a good-faith effort, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant has not presented any plan to repay her delinquent debts or a meaningful track record of debt payment. The \$10 payments are not a meaningful payment based on the size of her debts. Her request for additional time to pay the debts is not a substitute for actual debt payment. AG ¶ 20(d) does not apply.

Applicant contacted a credit counselor and had telephone conversations with her. They never met in person. Under these circumstances, AG ¶ 20(c) does not apply.

Applicant stated she disputes the debt to a university at SOR 1.b because she has no knowledge of the debt. In her personal subject interview, she acknowledged the debt and provided information on the debt. She has not presented any documented proof that she filed a dispute. In addition, there is no reasonable basis presented to substantiate the dispute. AG ¶ 20(e) does not apply.

Applicant has not shown that she manages her personal financial obligations reasonably and responsibly, and her irresponsible financial conduct is likely to continue. There is ample evidence of irresponsible behavior, lack of good judgment, and

unreliability. Based on all of the financial information, I conclude that Applicant has not mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. Applicant did not present sufficient information to establish that she acted reasonably and responsibly towards her finances. Her financial track record does not establish confidence that she has or will responsibly manage her financial obligations. This indicates that she will not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is denied.

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;	For Applicant
Subparagraphs 1.b – 1.x:	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.

THOMAS M. CREAN
Administrative Judge