



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



In the matter of:)
)
) ISCR Case No. 15-03798
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

01/13/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On November 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 within the DOD on September 1, 2006.

Applicant answered the SOR on March 3, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 12, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 17, 2016. I convened the hearing as scheduled on December 6, 2016. The Government

offered exhibits (GE) 1 through 5. Applicant objected to GE 2, and it was not admitted into evidence. The remaining exhibits were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through D, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 14, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.e, and 1.f. She denied the allegations in SOR ¶¶ 1.a and 1.d. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. She attended college from 1990 to 1993, as a full-time student, but did not earn a degree. She was married from 1996 to 2006. She testified that she did not work for three to four years after she married. She has no children. She does not provide financial support for anyone. She has been employed by a federal contractor since 2003.¹

Applicant testified that in 1990 she obtained student loans to attend college. She obtained both federal and private student loans. She attended college until she could no longer obtain loans to continue her education. She believed the college received money from one of the loans for a semester she did not attend. She believed someone fraudulently cashed the loan check. It is unclear if that loan is included with her other student loans. She stated that she believed she borrowed about \$10,000 and the balance owed was about \$12,000. The loans were deferred for an unknown period. She testified she did not make any payments on the loans from 1994 to 1996. The loans were sold to other lenders. She testified that she made inconsistent payments on the loans until about 2008 and then stopped paying them. She estimated that she paid about \$2,000 during this period. It is unknown when or if she restarted the payments. In her security clearance application (SCA), she indicated she had two delinquent student loans in the amount of \$17,000 each. No documents were provided to verify the periods of deferment or payments made during these periods.²

Applicant testified that at some point her wages were garnished \$400 a month to pay her student loans, and she believed it occurred over a four to five-year period. She testified that the garnishment payments stopped and resumed when the loans were sold to different creditors. In addition, her federal income tax refunds were involuntarily withheld. She believed about \$14,000 was withheld over the years. Applicant testified that she told the government investigator, who conducted her background interview in 2013, that she had the ability to pay her loans and would follow up to do so. She subsequently had difficulties finding the current creditors because the loans were sold. She testified that at the time she could not afford to make the loan payments. The total

¹ Tr. 20-23, 47, 50; GE 1.

² Tr. 23-27, 44-51; GE 1.

amount that was garnished over the years is unknown. The student loan that was paid for a period through garnishment is unknown.³

Sometime in 2016, Applicant was contacted by one of the student loan creditors and was advised to participate in an automatic repayment rehabilitation program. She testified that she thought her loans were being paid through garnishment. She stated she was told she owed a balance of \$22,000. She did not provide documentation to verify her current balance. She entered the rehabilitation program and pays \$5 a month. After she completes nine consecutive monthly payments, her loans will come out of default status and a monthly payment arrangement will be made. She anticipated this would occur in December 2016, and the payment amount would be approximately \$200 to \$300.⁴ Applicant requested the student loan creditor cease her garnishment payments. She provided a letter from July 2016 from the creditor advising her that her request was being processed. She testified that at the time of the hearing, her wages were not being garnished. No additional information was provided. She testified that the student loans in SOR ¶¶ 1.e (\$18,009) and 1.f (\$11,045) are still delinquent, but are being rehabilitated. She intends to pay them, but was confused as to the identity of the creditors and believed the garnishment payments were satisfying her student loan debts.⁵

Applicant admitted the delinquent medical debts in SOR ¶¶ 1.b (\$172) and 1.c (\$156) in her answer to the SOR, stating she thought they were paid, and if they still needed to be paid she would do so. According to her credit report, it appears SOR ¶ 1.b was settled for less than the full amount in 2015. The debt in SOR ¶ 1.c remains unresolved. Applicant testified that she checked with her medical providers and does not know what this debt was for. No other action was taken to dispute or resolve this debt. She indicated that she could not determine the specific creditor.⁶

SOR ¶ 1.d (\$715) alleged a judgment. Credit reports from August 2013, April 2015, and July 2016 report the judgment. The July 2016 credit report shows a different first name, but lists Applicant's maiden name and her correct Social Security number. In addition, the creditor is the same apartment complex where she lives. Applicant denied the judgment belongs to her. Department Counsel provided the court abstract of the judgment that has a similar name as Applicant's but a different Social Security number. This allegation is concluded for Applicant.⁷

³ Tr. 27-46, 51-55, 59-60; GE 3, AE B. Applicant testified the garnishment began in approximately 2012 or 2013, but she also indicated on her security clearance application that it began in 2006. No documentary evidence was provided to clarify the discrepancy.

⁴ AE A.

⁵ Tr. 30-46, 60-61; AE B, C.

⁶ Tr. 62-65; GE 4, 5.

⁷ Tr. 65-69; GE 1, 3, 4, 5; AE D

Applicant denied she owed the debt in SOR ¶ 1.a (\$182) for a check returned for nonsufficient funds. During her hearing, she acknowledged that she told the investigator in 2013 that she would research the debt, and she had the ability to pay it if it belonged to her. She testified that she did not obtain a copy of her credit report until it was mailed to her as part of these proceedings. She did not provide information of her actions to dispute the check.⁸

Applicant attributed her financial problems to underemployment. After she divorced in 2006, she received \$16,000 from her husband's pension account. It was transferred to her pension plan, and she withdrew \$4,000 and used that money to pay her credit cards. In 2010, she purchased a new vehicle. She stated she has one more payment and the loan will be satisfied. She has nine open credit cards with an approximate cumulative balance of more than \$9,000. She estimated she has about \$100 remaining at the end of the month after she pays bills. She intends to use her 2016 income tax refund to pay her credit cards, and will have money to pay her student loans. She anticipated her income tax refund would be approximately \$2,000. She has \$300 in a savings account and \$100 in a checking account. She does not have a budget and has not received financial counseling.⁹

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 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, 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

⁸ Tr. 69-75.

⁹ Tr. 76-89.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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

The security concern for financial considerations is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁰

¹⁰ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has unresolved financial delinquencies. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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, 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.

Applicant's student loans were deferred for an unknown period and were delinquent. Her wages were garnished for a period to pay them. Subsequent to receiving the SOR, she began a loan rehabilitation program. After completion of the program a new monthly payment will be determined. Applicant's delinquent loans are not resolved. Her actions to resolve them were not timely. Her failure to actively address her delinquent student loans casts doubt on her reliability, trustworthiness, and good judgment. There is insufficient evidence to apply AG ¶ 20(a).

Applicant attributed her financial problems to being underemployed and not having sufficient money to repay her student loans. This was marginally beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant's wages were garnished to repay her loans. It is apparent she was confused as to which loans were being paid. She began participating in a modest rehabilitation program paying \$5 a month on her student loans, but did not begin until after she was contacted by the creditor. She has been steadily employed since 2003. She received \$16,000 from her husband after they divorced in 2006. She used some of the money to pay credit card debts. She did not provide evidence of action she may have taken at this time to make payment arrangement for her student loans. Applicant did not act responsibly in addressing her student loans. AG ¶ 20(b) partially applies.

Applicant has not participated in financial counseling. She does not have a budget or a realistic plan for managing her student loan payments once a monthly payment plan is implemented. At this juncture, it is too early to conclude that her financial problems are under control. AG ¶ 20(c) does not apply. The remaining delinquent debts in SOR ¶¶ 1.a and 1.c are small, and Applicant attempted to resolve the medical debt but was advised she did not have any outstanding bills from her provider. The other debt she has consistently disputed. I have given her the benefit of the doubt on these debts and find in her favor. Applicant's garnishment payments and recent monthly loan rehabilitation payments do not constitute a good-faith effort to repay her creditors. She has had years to address the student loans and continues to be confused about their status and balances. There are not clear indications that Applicant's financial problems are resolved or under control. AG ¶ 20(d) does not apply. She provided sufficient evidence to refute the judgment alleged in SOR ¶ 1.d. AG ¶ 20(e) applies to this debt.

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.

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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 47 years old. She has been steadily employed since 2003. She is single and does not provide financial support for anyone else. The major financial security concern is her delinquent student loans. Applicant does not have a solid understanding of the specifics of her student loans. At times they have been paid through garnishment, but it is unclear which of the loans the payments were applied to, and both remain delinquent. Although she indicated she was unable to pay them in the past due to underemployment, she failed to provide a credible record of her efforts to voluntarily resolve them through a plan. The loan holder contacted her to arrange a modest rehabilitation program. Once she completes it, a monthly payment program will begin. Applicant does not have realistic plan or budget for managing these future monthly payments. She has nine open credit cards that she is paying, along with her other regular monthly expenses. She indicated that she intends to use her income tax refund to pay her credit cards, but in the past her tax refunds were involuntarily withheld and applied to student loan debt. It is unknown if that will continue. She indicated she has \$100 remaining at the end of the month, and her car note is almost paid, so she will have additional expendable income. Applicant does not have a reliable track record of acting responsibly toward resolving her student loans. Until she consistently makes the new monthly payments on her student loans after a plan is implemented, it is too early to conclude that her judgment, reliability, and trustworthiness are not a security concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate financial considerations guideline 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:
Subparagraph 1.b:
Subparagraph 1.c:
Subparagraph 1.d:
Subparagraph 1.e:
Subparagraph 1.f:

For Applicant
For Applicant
For Applicant
For Applicant
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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge