



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



In the matter of:)
)
) ISCR Case No. 15-08700
)
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 June 17, 2016, 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 July 19, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 26, 2016. I convened the hearing as scheduled on December 7, 2016. The Government

offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through F, which were admitted into evidence without objection. Hearing Exhibit I is a demonstrative chart provided by Department Counsel. DOHA received the hearing transcript (Tr.) on December 15, 2016.

Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶¶ 1.s and 1.w, which she denied. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. She enlisted in the Army Reserve in 1993. She was on active duty from 1995 to 1997, and again from 2004 to 2005. She is an E-7. She married in 1995 and divorced in 1996. She remarried in 1996 and divorced in 2004. She has a 19-year-old child from that marriage. She has an eight-year-old child from another relationship. Because she and the child's father co-parent, she does not receive child support.¹

Applicant has a full-time job where she has worked since October 2015. She recently received a pay raise. She is seeking a security clearance for her part-time job with a federal contractor that began in June 2015. She explained she only works at her part-time job when she is notified that her services are needed. Therefore, her part-time income is inconsistent. She had been living paycheck to paycheck in the past, but she is now in a better financial position to address her delinquent debts.²

Applicant testified that because of her military duties, she first applied for a security clearance in 2008 and was denied due to financial issues. She waited a year and reapplied in 2009, but was again denied and was unable to deploy with her unit.³

Applicant began attending college in 2006 as a full-time student. She transferred to a different school from 2007 through 2013. She had to repeat classes she failed and was pregnant during this period. She graduated in 2013, earning a licensed practical nursing diploma. She used student loans to finance her education. The student loans in SOR ¶¶ 1.g (\$4,662), 1.i (\$4,216), 1.k (\$3,051), 1.l (\$2,930), 1.m (\$2,198), and 1.p (\$688) are with the same creditor and are in collection status. She has not made payments on these debts. Applicant defaulted on them in 2013. She testified that she spoke with a loan officer and advised him that she could not afford to pay the loans. She contacted the loan officer again after her 2015 federal and state income tax refunds were involuntarily withheld and applied to her debts. She provided a document to show that the current balance owed for these six student loans is \$9,159. In August 2016, she

¹ Tr. 18, 24-30, 71-72.

² Tr. 30-32, 62-63; 76-78.

³ Tr. 72-76.

began a rehabilitation program with the creditor and has paid \$5 a month. Her last payment was December 2016. She stated that now that she has successfully completed the rehabilitation program, she will be required to make monthly payments based on an amount determined by the creditor. She does not know what the amount will be and has not started the monthly program.⁴

The student loans in SOR ¶¶ 1.a (\$8,302), 1.b (\$6,870), 1.c (\$5,926), 1.d (\$5,843), 1.e (\$5,759), 1.f (\$4,766), 1.h (\$4,558), 1.j (\$4,111), and 1.n (\$1,817) are with the same creditor and are in collection status. Applicant stated that she contacted the creditor when the loans were due, but was unable to make payments. After her federal and state income tax refunds were withheld, she contacted the creditor again in June 2016, and began a rehabilitation program whereby she paid \$5 a month for six months. She testified that she has successfully completed the rehabilitation program, and she is waiting to hear what the monthly payment will be. The current balance owed on these nine student loans as of November 2016 is \$63,981. She expected, with her pay raise, that she will be able to make the monthly student loan payments.⁵

The debt in SOR ¶ 1.o (\$1,678) is for furniture Applicant purchased in 2012. She stopped paying the bill in October 2014 when she lost her job for a month, and was subsequently unable to resume payments. The debt in SOR ¶ 1.q (\$449) is owed to the same furniture creditor. Applicant testified that her mother was responsible for this account, but it was in Applicant's name. Her mother stopped paying the bill, and Applicant took over the payments. It has been delinquent since November 2014. The debt in SOR ¶ 1.r (\$66) is a store account. It has been delinquent since approximately November 2014. Applicant stated that she is disputing the debt in SOR ¶ 1.s (\$1,145). She admitted she had an account for cell phone service with the creditor and requested it send her a bill for the months in question. She no longer has cell phone service with the creditor. The debt remains on her credit report. She did not provide documented evidence of her effort to resolve the debt.⁶

The debts alleged in SOR ¶¶ 1.t (\$962), 1.u (\$815), 1.v (\$735), 1.x (\$440), 1.y (\$437), 1.z (\$409), 1.dd (\$244), and 1.ee (\$164) are medical debts. Applicant disputes the debt in SOR ¶ 1.u (\$815), stating that this debt was incurred in 2014 while on active duty and it should have been paid by the military. She stated that she attempted to resolve it with her command, but it has been unresponsive. She did not provide evidence to substantiate her claim. She has not paid any of the other debts. She indicated these medical bills are for her care and that she did not have insurance when they were incurred.⁷

⁴ Tr. 19-24, 32-39; AE B, C.

⁵ Tr. 39-46, 62, 77-78; AE D, E.

⁶ Tr. 46-59; GE 3, 4.

⁷ Tr. 58-64.

The debt in SOR ¶ 1.w (\$645) is a payday loan from approximately 2013. Applicant disputed the debt because she believes it is paid. She stated she does not have documents to support her position because it was so long ago.⁸

The debt in SOR ¶ 1.aa (\$370) is a water bill that Applicant denies she owes, indicating she never had services with the company. She has not taken action to dispute the debt. She also denies the debt in SOR ¶ 1.bb (\$355) indicating that she does not recognize the creditor. She has not taken action to dispute the debt. She admitted that she had insurance with the creditor in SOR ¶ 1.cc (\$261) in the beginning of 2015, but did not believe she had a delinquent amount owed. She stated she would try to resolve the problem.⁹

The debts alleged in the SOR are supported by Applicant's admissions, testimony, and credit reports from September 2016 and August 2015. She attributed her financial problems to not earning enough money.¹⁰

Applicant took a vacation cruise in approximately April 2015, and spent about \$2,000. She explained that she wanted to reward her older child for helping her care for her younger child. In April 2014, she took a cruise and indicated she spent about \$400. She stated she took another cruise in 2012, and it was paid for by her mother, and Applicant did not spend any money. She has not received financial counseling. She indicated she has a written budget. Applicant hired a credit repair service in March 2016 to help remove negative entries from her credit report. The cost of the service was \$350.¹¹

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,

⁸ Tr. 64-65.

⁹ Tr. 65-69.

¹⁰ GE 1, 2, 3, 4.

¹¹ Tr. 52-54, 57,-58, 70, 85-91; AE A.

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.

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.¹²

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.

¹² See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant owes more than \$73,000 in delinquent student loans. She is participating in rehabilitation programs, but does not know what her future monthly payments will be. She also has unpaid consumer and medical debts. There is insufficient evidence to apply AG ¶ 20(a) as Applicant's debts are recent, multiple, and not resolved. Her financial difficulties did not occur under circumstances making them unlikely to recur.

Applicant presumably did not pay her debts due to underemployment, which was beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant did not begin rehabilitating her student loans until mid-2016. She has not provided evidence of her attempts to pay the other delinquent debts. She spent money on a vacation in 2015, despite being aware of her financial problems. She has a full-time and a part-time job, which shows she has taken some initiative to increase her income. However, there is insufficient evidence to conclude Applicant acted responsibly under the circumstances by paying her debts. AG ¶ 20(b) partially applies.

Applicant has not had financial counseling, but hired a credit repair service. Although she has participated in two rehabilitation programs regarding her student loans, her minimal payments are insufficient to conclude that her financial problems are under control. She is waiting to be advised as to the amount of her monthly payments. She has not addressed her other delinquent debts. AG ¶ 20(c) partially applies because she employed a service to help her remove negative information from her credit report, which shows some effort to put her finances in order.

Applicant's payments of \$5 a month to two rehabilitation programs for her student loans do not constitute a good-faith effort to repay one's creditors or show responsible conduct regarding one's finances. These efforts did not begin until mid-2016. It does show that she is attempting to put her finances in order regarding her student loans. She receives some credit for this. However, she failed to provide evidence of actions she has taken regarding her other delinquent debts. There are not clear indications that Applicant's financial problems are being resolved or under control. AG ¶ 20(d) has minimal application.

Applicant denied and disputed some of the alleged debts, but failed to provide documented evidence of her efforts to resolve the disputed debts. AG ¶ 20(e) does not apply.

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 41 years old. She is an Army reservist. She has a history of financial problems. She has completed rehabilitation programs regarding her student loans, but has not been advised what her future monthly payments will be. She has numerous other delinquent debts that she has not resolved. Applicant does not have a solid budget or reliable track record of acting responsibly toward her financial obligations. Applicant's conduct raises questions about her judgment, reliability, and trustworthiness. 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 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

Subparagraphs 1.a-1.ee:

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