



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00301

Appearances

For Government: Andre Gregorian, Esquire, Department Counsel

For Applicant: Kathryn Donnelly, Esquire

03/30/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On May 23, 2016, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations).¹ On June 13, 2016, Applicant responded to the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on February 22, 2017. A hearing scheduled on March 3, 2017, for April 4, 2017, was cancelled when Applicant retained counsel and an extension was requested. The matter was rescheduled on May 10, 2017, for a June 13, 2017, hearing. The hearing was convened as scheduled.

The Government offered seven documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-7. Applicant gave testimony,

¹ 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 or after September 1, 2006. The AG have since been amended. The present AG applicable for any adjudication on or after June 8, 2017, are applied here.

introduced two witnesses, and offered 22 documents, accepted without objection as Exs. A-V. The record was left open through July 7, 2017, to provide the parties with sufficient time to submit additional materials. On July 7, 2017, Applicant submitted a file supplemented with four attached enclosures. It was accepted as Ex. W without objection. A transcript (Tr.) of the proceedings was received on July 12, 2017, and the record was closed. After review of the record as a whole, I find that Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 48-year-old configuration management principal leader who has worked for the same entity for about four years. She has earned a bachelor's degree. She is married with three children.

In 1990, Applicant and her husband bought a new home in which they lived for about two years. In 1992, Applicant inherited a townhouse. She and her husband moved into the inherited property and, because their own home had declined in value, decided to turn it into a rental property.

In 2005, Applicant's husband was unemployed for about four months, straining their ability to pay their credit card bills. During this time, the couple took an investing course. Between 2006 and 2007, Applicant and her husband lost about \$30,000 in funds drawn from their retirement accounts through day and weekly stock trading.

Meanwhile, the home purchased in 1990 remained a rental property until 2009, when Applicant and her husband moved back into the home while selling the inherited property and looking for a new house to purchase. Within a year, they moved into a newer home and began renting the first property again. For a number of years, they had good, reliable tenants.

By 2010, the real estate market had declined, the rental home's value had been reduced, and good tenants were hard to find. Eventually, a young couple with a small child moved into the house in the fall of 2010. About a year later, after several complaints from neighbors, Applicant investigated the home. The tenants had vacated the house and left it destroyed. (Tr. 28-32) It took a considerable amount of time and financial resources to repair the home. Costs ran as high as \$15,000. (Tr. 62) As a consequence, Applicant and her husband fell behind on the mortgage.² (Tr. 31) Meanwhile, Applicant's husband was unemployed from late 2012 until June 2013, then again starting in April 2016 to date.

In 2013, Applicant and her husband spoke with the property's mortgage servicing company, hoping to discover what sum could be paid to get back on track with their

² Between 2010-2011, Applicant and her husband met with a bankruptcy attorney due to rising credit card obligations, but they decided to have their lawyer negotiate with their creditors for better terms. (Tr. 44) In this manner, some of the debts were negotiated and ultimately paid with money withdrawn from their retirement accounts. (Tr. 44)

mortgage payments. The servicing company's representative instead recommended that they apply for a certain program, the Home Affordable Refinance Program (HARP).

Applicant's husband stated that the program would not accept a property that was rental in nature, and noted that they made too much money. The representative urged them to try anyway, and they did. The process was fraught with delays and extensions by the servicer. Eventually, they were told they could pay about \$16,000 and catch up on their payment schedule. Applicant remitted payment, but the check was returned with a note stating the amount due was \$21,000. (Tr. 35) Frustrated by further problems, Applicant's husband decided to walk away from the rental property, knowing it would reflect badly on their credit reports. (Tr. 36)

As far as Applicant and her husband were concerned, they were through with the rental property. They never heard anything from the servicer again. Then, in 2016, they started receiving court papers concerning the property. At a hearing, it was determined that the mortgage had been improperly transferred to a newer entity. At the same time, the previous mortgagor was no longer in business. Then, the servicer changed, with the new servicing agent no longer accepting payments.

More confusion transpired until Applicant was again asked to apply for a loan remodification in December 2016. (Tr. 38-39) The process this time was also fraught with difficulties and poor communication. (Tr. 39) Applicant has since been told that the house went into foreclosure, the property went to auction, and, with no bidders, the bank had bought the home in April 2017, but she has seen no documentation to that effect. (Tr. 42, 65) Citing to irregularities in this process, Applicant has filed a complaint with the Consumer Financial Protection Bureau (CFPB). (Ex. W, Encl. 1) Applicant is still awaiting documentation regarding the auction or some other documents regarding the status of the house and her associated liability, if any. (Tr. 42-43) According to the credit report underlying the SOR, the account is past-due by \$40,776 with a total loan balance of \$120,522. (SOR 1.a)

Also at issue in the SOR, based on Applicant's credit report, are the following:

1.b – Charged-off account (\$2,543) – No evidence of payment - This account is a duplicate of the account noted below at 1.i. (Ex. W at 1-3). Applicant's husband testified that this account was previously settled, but provided no documentary evidence indicating such payment or a reduction of balance to zero.

1.c – Medical delinquent account (\$1,880) – Unpaid. Applicant's health insurer authorized an experimental treatment for pelvic pain. When the insurer later refused to cover the medicine used in the procedure, she appealed. She lost her appeal and the insurer denied the entire claim. No documentary evidence of further action by Applicant was submitted. She is presently unable to make payments on the account. (Tr. 87)

1.d – Medical delinquent account (\$1,312) – Unpaid. Applicant's health insurer authorized an experimental treatment for pelvic pain. When the insurer later refused to cover the medicine used in the procedure, she appealed. She lost her appeal and the insurer denied the entire claim. No evidence of further action was submitted by Applicant. She is presently unable to make payments on the account. (Tr. 87)

1.e – Collection account – (\$1,153) – Settled. This account is a duplicate account. See adverse judgment at 1.m, below.

1.f – 1.j – Medical delinquent accounts (\$1,523) – Unpaid. These medical debts are related to the experimental treatment noted above, and emergency treatment in 2015 for her son's appendicitis. Applicant is currently researching these accounts. She is presently unable to make payments on the debts related to her treatment. (Tr. 87)

1.k – Adverse judgment (\$9,506) – Settled. This case was settled and dismissed with a reduced balance, which was cancelled in April 2011. (Ex. W at 10-11) Applicant received a 1099-C form for the settled amount cancelled, (\$2,566). (Ex. W at 12)

1.l – Adverse judgment (\$2,461) – Duplicate account. See 1.b, above.

1.m – Adverse judgment (\$3,571) – Settled. Applicant provided evidence that this debt was cancelled and a 1099-C form issued. (Ex. W at 15-17)

1.n – Failure to pay 2013 federal taxes – Paid. Applicant provided documentation in the form of her 2013 tax transcript that showed she set up an installment plan and satisfied her 2013 income taxes before the SOR was issued. (Ex. G; Ex. W at 16-17; Ex. W, Encl. 3)

At present, Applicant is a registered substitute teacher who was poised to start work in the fall of 2017. She also has a pending job offer from a defense contractor that offers a lucrative salary. She recently submitted another HARP loan application, hoping to modify the mortgage on her residence. She plans to withdraw funds now reserved in her retirement account to pay the mortgage when the HARP application is resolved.³ (Ex. W)

Meanwhile, money remains tight. Applicant is about six-and-a-half months behind on her residential mortgage. (Tr. 96) Applicant conceded that she and her husband are living paycheck-to-paycheck. (Tr. 93) She stated, "I'm concentrating on paying our current debts, our current obligations, I don't have the funds to go backwards and settle these [older] debts [at issue here]." (Tr. 92) Thus far, she has met monthly expense successfully. (Tr. 94) Her strategy is to work her way chronologically backward and address her old bills when she starts to accrue enough money to pay them. (Tr. 92) She has not received financial counseling.

³ Elsewhere, Applicant stated, "I don't have any retirement savings because I've been using that to pay off our mortgage." (Tr. 93)

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 the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. Any 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions shall in no sense be a determination as to the loyalty of the applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government introduced credible evidence indicating that Applicant had acquired significant delinquent debt and that she had not timely paid her 2013 federal taxes. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

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.

Under these facts, four conditions could potentially mitigate the finance-related security concerns posed here:

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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

As a threshold matter, I note that there is nothing exceptionally unique about the multiple debts at issue, some of which remain unaddressed, obviating application of AG ¶ 20(a). The medical problems, a bad tenant, and Applicant's husband's periods of unemployment potentially raise AG ¶ 20(b). Applicant, however, provided insufficient information reflecting that she acted responsibly at the time except with regard to the rental property, raising that mitigating condition only in part. AG ¶ 20(c) does not apply because Applicant has not received financial counseling.

To Applicant's credit, she has endured multiple obstacles with regard to the mortgage referenced in SOR allegation 1.a. However, despite her efforts, she was unable to present documentation reflecting the status of the property at this time. Applicant's husband is sure the debt at 1.b (and its duplicate 1.l) has been settled. The debts at 1.c-1.d and 1.f-1.j are medical in nature. Applicant bluntly conceded that she simply lacks the funds at present to pay these bills, which amount to about \$4,700, but noted likely prospects for employment in the near future. She settled the debts at 1.e, 1.k, and 1.m (a duplicate of 1.e), representing about \$10,700 in debt. And she offered proof her 2013 federal taxes were paid by 2014, despite the SOR alleging it remained unpaid as of the time of the 2016 SOR. Under these circumstances, AG ¶ 20(d) and AG ¶ 20(g) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 48-year-old configuration management principal leader who has earned a bachelor's degree. She is a highly credible and earnest individual. She is married with three children. Applicant has acquired considerable delinquent debt. Health issues, a bad tenant, periods of unemployment adversely affecting the family coffers, and cumbersome dealings with mortgagors have contributed to Applicant's acquisition of delinquent debt.

Despite many frustrations related to her interactions with the banks and mortgagors involved in the disposition of the property noted at allegation 1.a, which represents the lion's share of the unresolved debt at issue, Applicant has made notable progress. She offered documentary evidence that she has paid or settled the debts at 1.e/m, 1.k, and 1.n. She addressed her tax issue promptly and appropriately. Applicant was highly credible and reflective in giving her testimony and in assessing her financial situation. It may take time, but I am convinced Applicant will eventually resolve her financial problems.⁴

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:

⁴ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) and ISCR Case No. 09-08462) at 4 (App. Bd. May 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a-1.n:⁵

For Applicant

Conclusion

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

Arthur E. Marshall, Jr.
Administrative Judge

⁵ Allegation 1.b is a duplicate of allegation 1.l and allegation 1.e is a duplicate of allegation 1.m.