



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



In the matter of:)
)
) ISCR Case: 16-01167
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Department Counsel

For Applicant: *Pro se*

April 25, 2018

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to have 16 delinquent debts totaling \$32,053. Three debts involved student loans that Applicant brought current, she resolved two delinquent debts to the satisfaction of the creditors, she credibly testified that she resolved her seven medical debts, and she is responsibly addressing her remaining accounts. Based upon a review of the transcript, pleadings and exhibits, national security eligibility is granted.

Statement of Case

On September 16, 2015, Applicant submitted a security clearance application (SF-86). On November 8, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865 (EO), *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 for Determining Eligibility for Access to Classified Information*.

Applicant answered the SOR on December 22, 2016. The case was assigned to another administrative judge on February 9, 2017, and reassigned to me on September 27, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on October 5, 2017. I convened the hearing as scheduled on November 14, 2017. The Government offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on her own behalf, and presented Applicant Exhibits (AE) A through E, without objection. DOHA received the transcript of the hearing (Tr.) on November 21, 2017. The record was left open for the receipt of additional evidence. Applicant submitted AE F through AE I, and they were received without objection. The record then closed on February 20, 2018.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.h, 1.i, 1.l, and 1.m. She denied the allegations in SOR ¶¶ 1.d, 1.f, 1.g, 1.j, 1.k, 1.n, 1.o, and 1.p. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old. She served on active duty in the Air Force from 2003 to 2010 and received an honorable discharge. Three weeks after her military discharge, she was diagnosed with cancer. She had no health insurance and she had not been informed that as a combat-deployed veteran, she could obtain free medical coverage. (Tr. 57.) She was unemployed from 2010 through 2015. (Tr. 44.) She worked for a government contractor from September 2014 to January 23, 2017, when she was terminated because she had not received a security clearance. She was hired by a second government contractor in August 2017, for a position that also required a security clearance. She was terminated on February 16, 2018, because she had not received one. Applicant attributes her debts to her cancer treatments and unemployment. (GE 1; AE I; Tr. 12, 50, 53.)

Applicant was alleged to be delinquent on three student loan accounts in the amounts of \$9,620; \$7,063; and \$2,423, as stated in SOR ¶¶ 1.a, 1.b, and 1.c. They became delinquent after she stopped going to school while being treated for cancer.

These debts are in good standing, as reflected on her credit report dated November 13, 2017. (GE 7; AE G; Tr. 13, 26-31, 59.)

Applicant was alleged to be indebted for \$7,366 for medical debts, as stated in SOR ¶¶ 1.d, 1.f, 1.g, 1.j, 1.k, 1.n, and 1.p. Applicant had health insurance through the U.S. Department of Veterans Affairs (VA) at the time, but the claims were denied by the insurer because they were “filed outside of the timely filing window,” and one also had an incorrect birthdate in her paperwork. Applicant documented telephonic inquiries she made with these creditors. She credibly averred that the VA resolved the mistakes and the claims are resolved. (GE 7; AE B; AE C; AE G; Tr. 12, 31-35, 42-43, 47, 49-50, 60-63.)

Applicant was alleged to be indebted on a charged-off account in the amount of \$1,760, as stated in SOR ¶ 1.e. Applicant settled this debt for a payment of \$1,000. It is reflected on her November 13, 2017 credit report as “paid and closed.” (GE 7; AE G; Tr. 35-41.)

Applicant was alleged to be indebted to a bank on a charged-off account in the approximate amount of \$1,432, as stated in SOR ¶ 1.h. Applicant presented a copy of a cancelled check in this amount, dated December 21, 2017. (AE G; Tr. 44-46.) It is resolved.

Applicant was alleged to be indebted to a collection agency on two accounts in the approximate amount of \$949, as stated in SOR ¶ 1.i; and \$563, as stated SOR ¶ 1.m. She produced a copy of her bank statement that showed two payments to this creditor totaling \$935.22 were made on December 14, 2016. Applicant is resolving these debts. (GE 7; AE G; Tr. 46-49.)

Applicant was alleged to be indebted to a Government agency on an account in the approximate amount of \$724, as stated in SOR ¶ 1.l. It was for an overpayment on Applicant’s tuition when she briefly attended school. Her November 2017 credit report reflected that this account had been delinquent since November 2012, and remained delinquent. (GE 7.) Her December 2016 bank statement reflects that she made a \$17.36 payment on this debt that month. (AE G; Tr. 47-48, 63-64.)

Applicant was alleged to be indebted to a retail store on an account in the approximate amount of \$153, as stated in SOR ¶ 1.o. This debt was reflected on her October 2015 credit report as having been delinquent since May 2011. Applicant contended she never had a credit account with this store. She testified that she called the store to arrange payment, but it could find no record of her account. In an email dated February 14, 2018, Applicant reported that she “remembered just a little bit ago that the [store omitted] account might reflect to a ba[d] check that I had cashed.” However, despite her best efforts, the store told her that it would not accept payment since it did not have a record of her debt. (GE 3; AE G.)

Applicant currently lives within her means. She has no new delinquent accounts. She has medical insurance. She is current with all of her income tax return filings. (Tr. 64-69.)

Applicant is well respected by those that know her. Her manager indicated she is “an excellent asset.” (AE A.) She was nominated as an “Outstanding Contributor” in February 2010. (AE D.) She has achieved many professional certifications. (AE D.) Her October 2009 Enlisted Performance Report listed her as “Truly Among The Best.” (AE E.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 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 evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the

possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant was delinquent on 16 debts totaling \$32,053. These debts became delinquent beginning around 2011. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes two conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s alleged financial difficulties:

- (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; and

(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.

The 16 SOR-alleged debts were accumulated between 2012 and 2015. In the past three years, Applicant has not accumulated new delinquent debts. She now lives within her means. The evidence establishes mitigation under AG ¶ 20(a), as the circumstances that contributed to her financial delinquencies are unlikely to recur and do not cast doubt on her current trustworthiness.

Applicant's financial delinquencies were caused by circumstances beyond her control. She had several periods of unemployment and was undergoing costly cancer treatments. Applicant has acted responsibly in manage the debts since obtaining her present employment. She paid off two debts, and she made payments on her student loans, VA debt, and several credit accounts. While she has yet to document resolution of her medical debts, she provided documentation of reasonable steps she has taken to work with the VA to get those debts paid. She has also taken efforts to track down her remaining retail store debt, but that store is unable to find record of her debt. As a result, she has acted reasonably with respect to these debts. This establishes further mitigation under AG ¶ 20(b).

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(d):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of 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.¹

Applicant provided sufficient evidence to demonstrate a plan to resolve her outstanding delinquent debts. The likelihood that financial problems will recur, or Applicant will stop making payments on the plans she has initiated, is minimal based on her efforts to date and her knowledge that similar problems could jeopardize her national security eligibility. The potential for pressure, coercion, or duress is eliminated by Applicant's efforts to resolve her debt. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She met her burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.p: For Applicant

¹ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 national security eligibility and a security clearance. National security eligibility is granted.

Jennifer I. Goldstein
Administrative Judge