



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 17-02029

Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

04/09/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On June 28, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have her case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's file of relevant material (FORM) on September 22, 2017. Applicant received the FORM on November 7, 2017, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and she provided a two-page response to the FORM. The Government's evidence, identified as Items 1 through 12, are admitted into evidence without objection. The case was assigned to me on March 20, 2018.

Findings of Fact¹

Applicant is 47 years old. She obtained a master's degree online in 2007. Applicant has been employed on a part time basis, by a federal contractor since February 2016. She also works as a development officer at a university since June 2013. She was married since 1996, and divorced in 2011. Applicant receives child support for their one son. Applicant reported no previous security clearance. She filed for Chapter 7 Bankruptcy protection in March 2011 due to excessive debts resulting from her divorce, and "my income range has always been from \$35,000 - \$38,000 per year with no outside support."²

Applicant reported her 2011 Bankruptcy filing, but did not report additional delinquent debts, including student loans, in section 26 of her security clearance application (SCA).³ The total amount that she owes for the student loans is \$95,836. In her August 3, 2017 answer to the SOR, she admitted to the delinquent student loans at SOR ¶¶ 1.a – 1.d, and 1.n – 1.p. She claimed that she consolidated all of these with one creditor and stated "payment arrangements have been made" in response to each allegation. Applicant produced no evidence of any repayment agreement, payments, or deferrals. Applicant made the same statement in response to the alleged debts in SOR ¶¶ 1.e through 1.h, and attached no documentary evidence showing that she actually made payments.

Applicant stated that her Chapter 7 bankruptcy case was withdrawn and she filed Chapter 13 instead, in response to SOR ¶ 1.i and SOR ¶ 1.j.⁴ Bankruptcy Court docket sheets reflect that she filed the Chapter 13 case first in February 2009, but that case was dismissed pursuant to a motion, after her failure to make plan payments.⁵ She then filed a Chapter 7 bankruptcy petition in May 2011, listing unsecured non-priority claims on Schedule F, in the amount of \$60,051.⁶ That case was closed in August 2011, after final disbursements by the Trustee. None of her student loans or current delinquent debts were dismissed in bankruptcy.

During her clearance interviews, Applicant claimed to have no knowledge of the judgments entered against her at SOR ¶¶ 1.k and 1.s.⁷ However, in her Answer, she

¹ Unless stated otherwise, the source of the information in this section is Applicant's March 30, 2016 security clearance application (SCA). (Item 5) and Personal Subject Interviews conducted on September 16, 2016, and March 24, 2017. (Item 12)

² Item 4.

³ Item 5.

⁴ Item 4. She also ascribes her separation as the putative reason for her bankruptcy.

⁵ Item 8.

⁶ Item 9.

⁷ Item 12.

stated that SOR ¶1.k stems from terminating a lease early, and she is paying on this judgement. Similarly, she stated that “payment arrangements have been made” for the judgment alleged at SOR ¶1.s. Yet, she produced no evidence of these payments. She also asserted that payment arrangements have been made for SOR ¶¶ 1.l, 1.m, and 1.r. She denied the allegation in SOR ¶ 1.t, stating “I no longer have this account with Capital One.” It is reflected in her credit bureau report as an account that was paid for less than full balance.⁸

Policies

This action was taken under Executive Order (EO) 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 new adjudicative guidelines (AGs) that were promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017. This decision is based on the new AGs.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual’s life to make an affirmative determination that the individual is an acceptable security risk. This is 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. Likewise, I have avoided drawing 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

⁸ Item 6

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 as to obtaining 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. Decisions include, by necessity, consideration of the possible risk that an 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

Guideline F, Financial Considerations

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

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 personnel security concern such as excessive gambling, mental health conditions, substance abuse, 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.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debts alleged in the SOR are confirmed by her credit reports and answer to the SOR, with the exception of SOR ¶ 1.t. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁹ Applicant has not met that burden. Her delinquent student loans and consumer debts have not been adequately addressed.

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 . . . , and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to 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 endured a divorce, and has been chronically underemployed as a single mother. Arguably, these conditions were beyond her control. She was provided with a fresh start when her Chapter 7 bankruptcy case was closed in August 2011. She accrued new delinquent debts. She has produced no relevant or responsive documentation, either with her Answer to the SOR, or in response to the FORM, to satisfy me that she is making consistent payments on the delinquent student loans, or other debts. She has not demonstrated that she acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. Applicant's credit reports and SOR list 18 delinquent debts, and two judgments, totaling \$105,398. Except for the debt at SOR ¶1.t, Applicant did not provide enough details with documentary corroboration about what she did to address her student loans. She did not provide documentation

⁹ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

including: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor (2) correspondence to or from the creditors to establish maintenance of contact;¹⁰ (3) credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because she did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was necessary to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 7-8) Aside from Applicant's uncorroborated statements, there is no documentary evidence that she has demonstrated a consistent track record of payments on the student loans pursuant to her repayment plan. She did not describe financial counseling or provide a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information. The FORM informed Applicant that she had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 8)

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 the 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.

¹⁰ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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(d) were addressed under those guidelines. Most importantly, Applicant has not addressed the specific allegations in the SOR concerning her student loans, which make up the majority of her delinquent debts.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. She has not met her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

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 through 1.s: Against Applicant

Subparagraphs 1.t: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge