



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



In the matter of:)
)
) ISCR Case No. 17-02183
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

07/10/2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the security concerns arising under the financial considerations guidelines related to her history of excessive indebtedness and gambling. National security eligibility for access to classified information is denied.

Statement of the Case

On April 22, 2015, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP). On August 25, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. The 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 the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR (Answer) on September 20, 2017. She initially requested a decision based on the written record, but Department Counsel timely requested a hearing. The case was assigned to me on October 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on December 18, 2017. I convened the hearing as scheduled on January 23, 2018. The Government offered Government Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified on her own behalf, and presented Applicant Exhibits (AE) A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 18, 2018. The record was left open for the receipt of additional evidence until February 23, 2018. Applicant timely submitted AE C, which was admitted without objection.

Findings of Fact

Applicant is 48 years old. She is a college graduate. She has worked for her current employer, a government contractor, since June 2004. Prior to 2004, she worked in accounting. She is single and has no children. (GE 1; GE 2; Tr. 20-23.)

In SOR ¶¶ 1.a through 1.d, Applicant was alleged to be delinquent on four accounts in the approximate amount of \$35,688. Those accounts include a delinquent mortgage and several credit card debts. SOR ¶ 1.e alleged that Applicant filed Chapter 13 bankruptcy in July 2016. Each of the debts alleged in SOR ¶¶ 1.a through 1.d are included in the Chapter 13 bankruptcy plan. SOR ¶ 1.f alleged that Applicant's on-line gambling contributed to her stated financial delinquencies. She admitted all of the allegations in SOR ¶¶ 1.a through 1.f.

Applicant's sister passed away in May 2013. For the last four and a half years, she has been grieving the loss of her sister, "and it led [her] to a lot of bad decisions with [her] finances." (Tr. 19.) She developed a gambling addiction. She engaged in "gambling, drinking, smoking, over indulgence of food and shopping" to help manage her grief. (GE 2; Tr. 24-25.) In 2015, Applicant lost approximately \$2,000 gambling. Her gambling losses increased to about \$1,000 every six weeks in 2017. (GE 3; Tr. 25.) She also spent beyond her means. (Tr. 26.)

In May 2015, Applicant stopped paying all of her bills, including those alleged in SOR ¶¶ 1.a through 1.d. She spent her income on shopping, gambling, alcohol, trips, and restaurants. (Tr. 29.) In May 2016, Applicant filed for Chapter 13 bankruptcy. Her Chapter 13 bankruptcy plan was confirmed in December 2016. She is on a 60-month repayment plan, and claimed to be current on her payments. She provided no documents regarding the status of her repayments. Despite filing bankruptcy, she did not change her spending habits. She continued to gamble. (Tr. 29-35.)

In January 2018, Applicant sought online help for her gambling addiction. She has attended one on-line meeting and called a gambling anonymous hotline. She has also contacted a grief hotline. She last gambled six days prior to the hearing, after seeking help by attending that on-line meeting. (Tr. 26-28, 35-37.)

Applicant performs well at work. Her performance evaluation from 2018 reflects that she “significantly exceeds” many of the criteria used to measure her performance. (AE C.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 AG ¶ 2 describing 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 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. Directive ¶ E3.1.15 states 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 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 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.

Finally, Section 7 of EO 10865 provides that adverse 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 relating to the guideline for 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts.

Applicant stopped paying her debts in 2015, so that she could fund her gambling habit. She filed Chapter 13 bankruptcy in 2016, but has continued to gamble. She provided no proof that she is current on her bankruptcy repayment plan. There is sufficient evidence to support the application of the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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, a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

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

Applicant's financial problems are ongoing. She continues to gamble, despite filing Chapter 13 bankruptcy to manage her delinquent accounts. She has not demonstrated that future financial problems are unlikely to recur. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed her delinquencies to self-medicating her grief over the death of her sister. The passing of her sister was a circumstances beyond her control. However, she failed to establish that she acted reasonably or responsibly with respect to her debts. While she has filed Chapter 13 bankruptcy, and is reportedly paying on those debts, she continued to gamble up to six days prior to the hearing, despite attending an on-line help group. She had the burden to demonstrate that she addressed her debts and gambling addiction in a responsible or timely manner, and she has not met that burden. Full mitigation under AG ¶ 20(b) has not been established.

Applicant's SOR-alleged debts remain unresolved. She produced no evidence of participating in effective financial counseling. Despite her accounting background and financial counseling required for the bankruptcy filing, she succumbed to a gambling addiction that she has been unable to control. While she has sought help from a grief support call center and a gambling support group, there are no clear indications that her financial and gambling problems are being resolved or are under control. Mitigation under AG ¶¶ 20(c) or (d) has not been fully established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

Under 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 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. Applicant is suffering from debilitating grief as a result of the death of her sister. She has used gambling, overspending, alcohol, and overeating as means to cope with her grief. She has realized that she needs to get professional help, but has not yet engaged with mental-health professionals in a meaningful way. Despite her excellent performance evaluation, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge