



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



In the matter of:)
)
) ISCR Case No. 17-02194
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant's financial delinquencies, many of which are medical debts, are largely attributable to conditions beyond her control. She is working three jobs to pay off her debts as best she can. She is making a good-faith effort to resolve her debts. Applicant has mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 4, 2015. On September 8, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on September 26, 2017, and requested a hearing. The case was assigned to me on February 16, 2017. On March 23, 2018, a Notice of Hearing was issued scheduling the hearing for April 24, 2018. The hearing convened as scheduled.

At the hearing, Department Counsel offered three exhibits, which were marked as Government Exhibits (GE) 1 – GE 3. Applicant testified and offered three exhibits, which were marked as Applicant's Exhibits (AE) A – AE C. All exhibits were admitted without objection. I held the record open until May 25, 2018, to afford Applicant the opportunity to submit additional documents. Applicant timely submitted three additional documents, which were marked as AE D – AE F, and admitted without objection. The record closed on May 25, 2018. DOHA received the transcript (Tr.) on May 4, 2018.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.g, 1.j and 1.k. She denied SOR ¶ 1.i. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 26 years old. She has never married and she has no children. She earned her high school diploma in June 2010. In 2016, she earned a medical administrative license certificate. She is currently pursuing an associate's degree at a community college. (Tr. 54) She submitted her SCA in March 2015 when she enlisted in her state's National Guard. She is currently a private first class (E-3) in the National Guard, and participates in monthly drills with her unit. (Tr. 26-27)

In March 2017, Applicant began working full time with a defense contractor at a naval shipyard. She has an annual salary of \$36,000. She needs a clearance for this employment. Applicant also works part time at a restaurant, where she has worked since 2007. She earns about \$400 a month in that job. (Tr. 27-30, 43; GE 1)

Applicant has accrued several delinquent debts in recent years. She attributed her debts, in part, to the fact that her mother was not a good role model financially, so she did not have anyone at home who could teach her about financial responsibility. She also earned a limited income working at the restaurant, and neither she nor her mother had good medical insurance. (Tr. 30-31)

Many of Applicant's delinquencies are medical debts, including SOR ¶¶ 1.a (\$1,787), 1.b (\$1,613), 1.c (\$1,261), 1.d (\$988), and 1.h (\$107). Many of these debts were accrued in about 2010, when Applicant was in her late teens. She required treatment for a broken bone, and other medical issues. (Tr. 34-35)

Applicant also has several debts in collection to phone and cable companies, including SOR ¶¶ 1.e (\$585), 1.f (\$396), 1.j (\$260), and 1.k (\$136). SOR ¶ 1.g, for \$313, a debt to a credit card company, is paid and resolved. (Tr. 36; AE B) Applicant has made a \$78 payment towards the medical debts. (AE A; AE C) She intends to resolve her cable bills next. (Tr. 41)

SOR ¶ 1.i is a \$661 past-due debt to a recent landlord. Applicant denied the debt in her SOR response, and believes the debt has been paid. Her credit reports show several small judgments to landlords, including several that have been paid, as Applicant asserts. SOR ¶ 1.i, however, is not shown as having been satisfied, as of June 2017. (GE 2; GE 3)

On April 13, 2018, days before the hearing, Applicant gave 30-days' notice that she was moving to a new apartment. She was informed that she has a balance of about \$609, which she intends to resolve before she moves. (AE F) She had otherwise been paying rent regularly, and had lived in the unit without any problems for several years. (Tr. 32-34)

Applicant's finances have improved significantly since she began working full time at the shipyard, putting her in position, for the first time, to begin dealing with her debts in a responsible way. Applicant recently purchased a small used car. She is current on her payments. She no longer has cable television. Her monthly rent is less than it was previously, and her new apartment is a better place to live. Applicant provides about \$100 a month in financial support to her younger sister. (Tr. 36-45)

Applicant's manager at the restaurant where she works has known Applicant for about nine years. She is hard-working, and is helpful and considerate towards her customers. She is punctual and is always willing to take on extra work. Applicant's supervisor wants to see Applicant succeed and advance in her career. (AE D)

Applicant's supervisor at the shipyard is a 21-year-veteran who has held a security clearance for many years. Based on his observations of Applicant over the last 13 months, he attested to her loyalty, integrity, discretion, morals, work ethic, and overall character. She is a dedicated professional, a valued co-worker, and an asset to the organization. He has no reservations about her suitability for a clearance. (AE E)

Policies

It is well established that no one has a right to a security clearance.¹ As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."²

The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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,

¹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

² 484 U.S. at 531.

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.” Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the 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.” The applicant 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.

Analysis

Guideline F, Financial Considerations

The security concern 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. . .

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

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

Applicant accrued various delinquent debts since 2010, including medical debts, cable bills, and unpaid rent. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

Applicant's various debts are attributable to several circumstances. First, she testified credibly that she grew up without a good financial role model to teach her about financial responsibility. Second, many of Applicant's debts are medical debts, incurred in about 2010, when she was in her late teens, probably with no medical insurance of her own, and with little income. Third, until she began working at the shipyard a year before the hearing, Applicant had little regular or stable income. This necessarily has impacted her ability to pay her debts and expenses.

Applicant's medical debts are several years old, but they are also ongoing. AG ¶ 20(a) therefore has limited application. However, there is no requirement that an applicant's debts be fully resolved in order to mitigate any resulting security concerns.

Applicant's debts are largely attributable to conditions beyond her control. Her debts are either medical debts (arising from unforeseen circumstances like injuries and illnesses) or regular expenses she was unable to pay (rent, cable, and phone). None of her debts relate to extravagant expenses. Further, Applicant is now working three jobs, all while going to school. She is serving her country and her community honorably in the National Guard. She is working full time at the shipyard. She continues working at the restaurant where she has been employed since early in her high school years. She is also pursuing an associate's degree. Applicant is resolving her debts in a responsible fashion, all while reducing her expenses and trying to help her family. She has also established that she has the resolve, the maturity, and the work ethic to alleviate any concerns that may arise about her finances in the future. AG ¶ 20(b) and ¶ 20(d) fully 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(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 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. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility for a security clearance. I conclude Applicant mitigated the financial considerations security concerns and is appropriate for access to classified information.

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: FOR APPLICANT

Subparagraphs 1.a-1.k: For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge