



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



In the matter of:)
)
) ISCR Case No. 17-02303
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

The Government did not establish the personal conduct security concern and Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

On July 21, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on September 22, 2017, and elected to have her case decided on the written record in lieu of a hearing. The Government's written case was submitted on November 3, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 13, 2017. She did not respond to the Government's FORM. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection. The case was assigned to me on February 14, 2018.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.p. As she did not specifically admit or deny SOR ¶ 2.a, but indicated that she did not intentionally falsify her application, I have construed her response as a denial.¹

Applicant is 33 years old, married, and has one stepchild who is a minor. She has worked as an aircraft mechanic for a defense contractor since February 2016. She obtained her high school diploma in 2003, an associate's degree in 2005, and two additional associate's degrees in 2016. She has never held a security clearance.²

The SOR alleges delinquencies for eight consumer accounts totaling \$15,250 (SOR ¶¶ 1.a, 1.c, 1.g-1.i, 1.l-1.n), four federal student loans totaling \$1,214 (SOR ¶¶ 1.b, 1.d-1.f), and four medical accounts totaling \$961 (SOR ¶¶ 1.j, 1.k, 1.o, 1.p). It also alleges that Applicant intentionally falsified her March 2016 security application when she failed to disclose her repossessed car, the balance of which was charged off as alleged in SOR ¶ 1.a.

Credit reports from April 2016 and May 2017 verify Applicant's delinquent debts. She also discussed them during her background interviews in 2017.³

Applicant attributes her delinquent debts to quitting the job she held since October 2005 in May 2014, so that she could go to school. She was consequently unemployed from June 2014 to February 2016, during which time she attended school for her two associate's degrees, as discussed above. She was financially supported by her spouse. She also acknowledged that she forgot about some of her debts, to include some of her medical debts, and she also believed that some of her medical debts were covered by insurance.⁴

Applicant stated that she was trying to resolve her financial delinquencies. She stated that she was paying some of her debts and hoped to begin paying the remainder of them in 2018. She provided documentation to show that at her request, her federal

¹ Item 2.

² Items 2-3.

³ Items 1-5.

⁴ Items 2-4.

student loans were approved for forbearance until January 21, 2018, at which time she was to resume with payments.⁵

As mentioned previously, Applicant stated that she did not intentionally falsify her application when she failed to list her repossessed car. She stated that she did not know what she was thinking when she responded “No.” She apologized for the misunderstanding.⁶

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 to be 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, 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, 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 Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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.

⁵ Item 2.

⁶ Item 2.

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 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.

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 was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the 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, 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;

(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 was approved for a forbearance of her federal student loans until January 2018, after which time she was to resume payments. I therefore find SOR ¶¶ 1.b, 1.d, 1.e, and 1.f for Applicant.

Applicant's decision to quit the job she held since 2005 so that she could go to school, and forgetting about some of her debts, do not constitute conditions beyond her control. She did not provide documentation to show that she has paid or otherwise resolved any of her remaining delinquent debts. There is no evidence that she received financial counseling. She did not provide documentation to show that some of her medical debts were covered by insurance. At this time, there is insufficient evidence to conclude that her financial problems are unlikely to recur, and they continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant stated that she did not intentionally fail to list her repossessed car. She stated that she did not know what she was thinking when she responded “No.” She apologized for the misunderstanding. When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove an applicant’s state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)). I conclude that AG ¶ 16(a) does not 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(a):

(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 Guidelines F and E in this whole-person analysis.

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 that the Government did not establish the security concern under Guideline E, personal conduct, and Applicant did not mitigate 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:

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|------------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.c, 1.g - 1.p: | Against Applicant |
| Subparagraphs 1.b, 1.d - 1.f: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a: | For Applicant |

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge