



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



In the matter of:)	
)	
)	ISCR Case No. 17-02958
)	
Applicant for Security Clearance)	

Appearances

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

May 10, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On October 25, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on November 24, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 23, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 23, 2018, scheduling the hearing for March 15, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 5, which were admitted without objection. Applicant testified on her own behalf. The record was left open until March 30, 2018, for receipt of additional documentation. Applicant offered four sets of documents, which I marked Applicant's Exhibits (AppXs) A through D, which were also admitted without objection. DOHA received the transcript of the hearing (TR) on March 23, 2018.

Findings of Fact

Applicant is a 36-year old truck driver. (GX 1 at pages 5 and 10.) She has been married for about “10 and a half years,” and her husband is also a truck driver. (TR at page 13 line 6 to page 14 line 23.) From about December of 2014 to September of 2015, Applicant dissipated their approximately \$8,000 of savings to satisfy the needs of her 2~3 online boyfriends. (TR at page 28 line 12 to page 32 line 21, and at page 37 lines 2~14.) This appears to be the root cause of Applicant’s alleged financial difficulties. She has virtually no savings, and depends on payday advances to meet her family’s financial needs. (TR at page 42 lines 10~21.)

Guideline F – Financial Considerations

1.a. Applicant is indebted to the Social Security Administration (SSA) for about \$17,188 as a result of unemployment disability benefits received, despite her and her spouse returning to work. (TR at page 15 line 3 to page 18 line 24.) Applicant has been aware of this overpayment since March of 2014 (AppX A), but has yet to address this substantial debt. This allegation is found against Applicant.

1.b. and 1.d. Applicant denies that she is indebted to a medical provider for two past-due debts totaling about \$1,411. She avers that these debts have been satisfied; and as they do not appear as past-due on the Government’s most recent December 2017 credit report (GX 5), these allegations are found for Applicant.

1.c. Applicant denies this allegation, and avers that she “settled” a past-due debt of about \$332 to a utility company. (TR at page 20 lines 21~25.) As Applicant has offered nothing further in this regard; and as this debt does appear on the Government’s most recent December 2017 credit report (GX 5), this allegation is found against Applicant.

1.e. Applicant denies this allegation, and avers that she “satisfied” a past-due credit card debt of about \$136. (TR at page 21 lines 8~23.) As this debt does not appear on the Government’s most recent December 2017 credit report (GX 5), this allegation is found for Applicant.

1.f. Applicant denies this allegation, and avers that she knows of no outstanding judgment for about \$588. (TR at page 21 line 28 to page 23 line 10.) As this outstanding judgment does not appear on the Government’s most recent December 2017 credit report (GX 5), this allegation is found for Applicant.

1.g. Applicant denies this allegation, and avers that she “paid . . . in full” a past-due credit card debt of about \$523. (TR at page 23 lines 11~18.) As this debt does not appear on the Government’s most recent December 2017 credit report (GX 5), this allegation is found for Applicant.

1.h. Applicant admits this allegation, and avers that she was “ready to pay” a past-due fitness center debt of about \$396. She avers that she called the creditor and “they had no record of it.” (TR at page 23 line 19 to page 24 line 11.) It appears that Applicant

is making a good-faith effort to satisfy this debt; and as this debt does not appear on the Government's most recent December 2017 credit report (GX 5), this allegation is found for Applicant.

Guideline E – Personal Conduct

2.a. As noted above, from about December of 2014 to September of 2015, Applicant dissipated their savings to satisfy the needs of her 2~3 online boyfriends. (TR at page 28 line 12 to page 32 line 21, and at page 37 lines 2~14.) In light of Applicant's substantial past-due indebtedness; also noted above, her judgment is questionable, at best. Applicant could have used the approximately \$10,000~\$12,000 she paid to these individuals, and instead addressed her SSA and utility debts, alleged in ¶¶ 1.a. and 1.c.

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 (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, "Any 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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 Executive Order (EO) 10865, "Any 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 concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her testimony, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(b) ("indebtedness caused by frivolous or irresponsible spending"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these apply to allegations 1.a. and 1.c. Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a. and 1.c. against Applicant.

Guideline E - Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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.

Based on Applicant's questionable financial conduct while online, the following disqualifying condition does apply:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment

Applicant, instead of using her savings to pay her substantial SSA past-due debt, used it to cater to online foreign nationals.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(b): the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a

person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability; and

AG ¶ 17(g): association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the mitigating conditions outlined above, none of them apply. Applicant has not shown that a similar lapse in judgment is unlikely to recur.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant not mitigated the security concerns raised by her Financial Considerations and related Personal Conduct. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a. and 1.c.: Against Applicant

Subparagraphs 1.b., 1.d.-1.h.: For Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's national security eligibility. Clearance is denied.

Richard A. Cefola
Administrative Judge