



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



In the matter of:)
)
) ISCR Case: 17-04165
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

November 27, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of Case

On July 11, 2013, Applicant submitted a security clearance application (SF-86). On January 16, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on March 13, 2018. She admitted all the allegations of the SOR, except for Subparagraphs 1.g., 1.h., 1.p., and 1.q., and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On May 16, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 11 Items,

was received by the Applicant on June 5, 2018. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant submitted nothing in response to the FORM. DOHA assigned the case to me on July 30, 2018. Items 1 through 11 are admitted into evidence.

Findings of Fact

Guideline F – Financial Considerations

Applicant is 49 years old. (Item 3 at page 5.) She is married, and has seven children. (Item 3 at pages 20 and 22.)

1.a.~1.d. Applicant admits that she filed for the protection of a Chapter 7 Bankruptcy in 1999 as she was “a single parent and needed a fresh start.” (Item 2 at page 1.) Applicant received a discharge from this Bankruptcy.

Applicant also admits that she filed for the protection of Chapter 13 Bankruptcies in April of 2005, in April of 2015, and in November of 2015. (*Id.*) They were all dismissed as Applicant was “unable to make monthly payment(s).” These allegations are found against Applicant.

1.e. Applicant admits that in about October of 2016, she suffered a mortgage foreclosure. (Item 2 at page 1.) This allegation is found against Applicant.

1.f. Applicant admits that she was indebted to the Federal Government in the amount of about \$6,356 for tax years 2013 and 2014. In her Answer, Applicant avers that “this amount has been satisfied and payment arrangements are in good standing,” but has offered nothing in support of this averment. This allegation is found against Applicant.

1.g. Applicant denies that she failed to file her Federal tax returns for tax year 2015, but has submitted nothing in support of her averment. This allegation is found against Applicant.

1.h. Applicant also denies that she failed to file her state tax returns for tax years 2015 and 2016. In Response to DoDCAF Interrogatories, Applicant has demonstrated that she prepared to file these state tax returns, but there is nothing to demonstrate that Applicant, in fact, filed these state tax returns. (Item 7 at page 42~45) This allegation is found against Applicant.

1.i.~1.m. Applicant admits that she was indebted to her state, as the result of five state tax liens totaling about \$5,137. She avers that these debts have “been satisfied – Proof sent to DoD.” Applicant has submitted documentation from her state showing that

these tax liens have “been removed . . . because there is no longer a balance owing.” (Item 7 at pages 48~58.) These allegations are found for Applicant.

1.n. Applicant also admits that she was indebted to her state, as the result of a sixth state tax lien, for about \$826. As Applicant has not submitted any documentation regarding this state tax lien, this allegation is found against Applicant.

1.o. Applicant admits that she was indebted to Creditor O as the result of a judgment in the amount of \$306. Applicant avers that this judgment “has been satisfied,” alluding to her bankruptcy filings. This judgment still appears as “unsatisfied” on Applicant’s March 2016 credit report (CR); and as such, this allegation is found against Applicant. (Item 10 at page 3.)

1.p Applicant denies that she was indebted to Creditor P as the result of a second judgment in the amount of \$1,533. Applicant avers that “this debt was cancelled.” As this judgment still appears as “pending” on Applicant’s March 2016 CR, this allegation is found against Applicant. (Item 10 at page 4.)

1.q. Applicant denies that she was indebted to Creditor Q as the result of a third judgment in the amount of \$596. Applicant avers that she has “no record” of this debt. As this judgment appears as “satisfied” on Applicant’s March 2016 CR, this allegation is found for Applicant. (Item 10 at page 4.)

1.r. Applicant admits that she was indebted to Creditor R as the result of a fourth judgment in the amount of \$535. Applicant avers that this debt “has been satisfied. As this judgment appears as “satisfied” on Applicant’s March 2016 CR, this allegation is found for Applicant. (Item 10 at page 5.)

1.s.~1.u. Applicant admits that she was indebted to Creditor S as the result of past-due medical debts totaling about \$594. Applicant avers that these debts have “been satisfied.” As they still appear as “outstanding” on Applicant’s November 2017 CR, these allegations are found against Applicant. (Item 8 at pages 1~2.)

1.v. Applicant admits that she was indebted to Creditor V, as the result of a past-due debt, in the amount of about \$4,692. As Applicant has submitted nothing further in this regard, this allegation is found against Applicant.

1.w. Applicant admits that she was indebted to Creditor W, as the result of a past-due debt, in the amount of about \$562. Applicant avers that this debt has been “paid in full,” but has submitted nothing further in this regard. As this debt appears as still in “collection” on Applicant’s March 2016 CR, this allegation is found against Applicant.

1.x. and 1.y. Applicant admits that she was indebted to Creditor X as the result of past-due medical debts totaling about \$248. Applicant avers that these debts have

“been satisfied.” As they still appear as “outstanding” on Applicant’s March 2016 CR, these allegations are found against Applicant. (Item 10 at page 6.)

Policies

When evaluating an applicant’s suitability for national security eligibility, 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 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. 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, 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 applying 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 EO 10865, “[a]ny 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 security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. . . .

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file . . . annual Federal, state, or local income tax returns

Applicant has a plethora of past-due debts and judgments. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes six conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

None of these apply. Although Applicant has addressed most of her state tax liens; and a couple of debts, most of the allegations have not been responsibly addressed. Guideline F is found against Applicant.

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.

According to 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 applicable guidelines and the whole-person concept. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, eligibility, and suitability for a security clearance. She has not met her burden to mitigate the security concerns arising under the guideline for financial considerations.

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
Subparagraphs 1.a through 1.h:	Against Applicant
Subparagraphs 1.i through 1.m:	For Applicant
Subparagraphs 1.n through 1.p:	Against Applicant
Subparagraphs 1.q and 1.r:	For Applicant
Subparagraphs 1.s through 1.y:	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 national security eligibility and a security clearance. National security eligibility is denied.

Richard A. Cefola
Administrative Judge