



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 18-00038

Appearances

For Government: Tara K. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 24, 2017. (Item 3.) On January 12, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. (Item 1.) The DOD CAF acted 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 answered the SOR on February 23, 2018 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 10, 2018. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 8. She was given an opportunity to file objections and submit material to refute, extenuate,

or mitigate the Government's evidence. She received the FORM on April 18, 2018, but did not respond to the FORM. The case was assigned to me on August 8, 2018.

Findings of Fact

Applicant, age 46, is not married and has three adult children. She graduated from high school in 1989. She separated from her husband in 2011. There is no evidence in the record of an official divorce. She has a significant other with whom she lives. She was unemployed from November 2011 to May 2012 and again in 2016. (Item 8) She has been employed with her current employer since November 2016. She has not held a security clearance.

The Statement of Reasons (SOR) sets forth security concerns under Guideline F (Financial Considerations). It lists eight collection accounts and a judgment, totaling about \$13,200. The SOR also alleges Applicant failed to file her 2013 Federal income tax return. (Item 3) In her Answer, Applicant admits to all allegations. She stated that her wages are being garnished for the delinquent taxes from tax year 2013 in the amount of \$1,740. (Item 2)

Applicant told the investigator during her 2017 subject interview that her 2013 delinquent taxes had been paid, but in her answers to interrogatories, she stated that she had no documentation from the IRS to prove her assertion. She blamed her financial issues on her 2011 marital separation and the foreclosure of her home. (Items 3 and 8)

Applicant stated in her interview that she could have avoided her financial delinquencies if she had been in a more responsible state of mind at the time, and did not let her life spiral out of control. (Item 8) The judgment alleged in the SOR was due to lack of homeowner's association payments. The record is silent as to Applicant's current financial stability. She provided no other details about the actions that she may have taken at the time to address the financial issues. There is no record of financial counseling.

Applicant did not supplement the record by responding to the FORM. She provided no documentary evidence of any payments or payment plans. Although she stated that the delinquent taxes were garnished and or paid, she provided no proof. There is no information in the record about the \$10,000 judgment (SOR 1.k) or how she plans to resolve or address such.

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 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 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, "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 credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations") and AG (19 (f) ("failure to file or fraudulently file filing annual Federal, state, or local income tax returns or failure to pay annual Federal , state or local income tax as required.)"

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved.

AG ¶ 20(b) is not established. While Applicant's 2011 marital separation and unemployment may have been a condition beyond her control, she has not acted responsibly to address the resulting debts and tax issues. Nor has she provided a nexus between those conditions and the delinquent accounts and her failure to file and pay federal taxes as required by law.

Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.k. against Applicant.

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):

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating the scant evidence she provided in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by her financial indebtedness. 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.

Subparagraphs 1.a-k: AGAINST APPLICANT

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge