



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



In the matter of:)
)
) ISCR Case No. 18-00564
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

10/10/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 14, 2015. On March 2, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations.¹

¹ 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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

Applicant answered the SOR on March 22, 2018. She elected to have her case decided on the administrative (written) record in lieu of a hearing. On April 9, 2018, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant was afforded an opportunity to file objections to the Government's evidence, and to submit material in refutation, extenuation, or mitigation. Applicant received the FORM on April 13, 2018. She did not respond to the FORM. The case was assigned to me on July 26, 2018. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant admitted all the debts alleged in the SOR (SOR ¶¶ 1.a through 1.bb). She provided no explanations and no documents with her answer. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 35 years old. She has never married. She has a seventeen-year-old son. She has worked as an office manager for a defense contractor since March 2015. She was previously employed as an executive assistant for a corporation from August 2006 to December 2008, when she was laid off. She was then unemployed for over two years, until April 2011. She worked as an executive assistant for another company for three-and-a-half years, until December 2014, when she was again laid off. She was unemployed for two months until starting her current position. (Item 3)

Applicant disclosed no delinquent debts on her August 2015 SCA. Her background investigation revealed the 28 debts in the SOR. All of them are listed on credit reports from September 2015 or February 2018. (Items 5, 6) In the summary of her October 2016 background interview, Applicant acknowledged some of her debts but claimed not to recognize others. (Item 4)

SOR ¶ 1.a is a debt to an auto company. It is \$1,779 past-due, with a total balance due of \$30,642. SOR ¶ 1.b (\$13,541) is a consumer debt that has been charged off. SOR ¶¶ 1.c (\$2,336), 1.e (\$2,214), 1.w (\$1,617), 1.y (\$525), 1.z (\$273), and 1.aa (\$121) are debts placed for collection by phone companies or cable television providers.

SOR ¶¶ 1.i (\$1,099), 1.p (\$65) and 1.r (\$399) are debts to retail or grocery stores. SOR ¶¶ 1.d (\$2,324), 1.g (\$1,366), 1.s (\$273), and 1.x (\$1,006) are other debts in collection. SOR ¶¶ 1.f (\$1,601), 1.k (\$917), 1.l (\$871), 1.m (\$823), 1.n (\$606), 1.q (\$458), and 1.t (\$185) are past-due medical debts. SOR ¶ 1.j (\$979) is a debt to an insurance company. SOR ¶¶ 1.h (\$1,290), 1.o (\$169), and 1.u (\$180) are debts to banks or for credit cards. SOR ¶ 1.v (\$2,643) is a debt to a credit union. SOR ¶ 1.bb (\$40) is for an unpaid speeding ticket.

When she answered the SOR, Applicant gave no explanation about the origin of any of the debts, all of which she admitted. While it is likely that some of the debts occurred during a period of unemployment, Applicant has not said this. She provided no information about any steps she has taken to settle, resolve, dispute, or otherwise resolve, any of the debts in the SOR, nor has she set out a plan to do so. She provided no documentation of the current status of any debt alleged. She also provided no details or documents about her current financial situation, such as her monthly income and expenses or her assets.

Policies

It is well established that no one has a right to a security clearance.² 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.”³

The adjudicative 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(a), 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

³ 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁴

AG ¶ 19 provides conditions that could raise security concerns: ¶¶ 19(a) "inability to satisfy debts" and (c) "a history of not meeting financial obligations" are applicable, given the record evidence of Applicant's delinquent debts.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and
- (d) the individual initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not provide sufficient evidence to apply any of these mitigating conditions. She admitted all of the debts, but offered no explanations or updated

⁴ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

information about their current status to show that any of the debts are resolved. She provided no documents about the current status of her debts. Applicant provided insufficient evidence from which to conclude that her financial issues are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant did not establish that her debts occurred due to conditions beyond her control. Moreover, even if that were the case, Applicant did not establish that she undertook reasonable efforts under the circumstances to resolve the debts. AG ¶ 20(b) therefore does not apply. Similarly, she did not establish that she undertook sufficient good-faith efforts to pay or otherwise resolve her debts. She did not establish that AG ¶ 20(d) should 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 the 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(a), 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. Applicant did not provide sufficient documented information that she attempted to resolve her debts in a good-faith, responsible manner. She did not establish that her debts are being resolved or are under control, and did not establish that her debts are unlikely to recur or no longer cast doubt on her current judgment, trustworthiness, and reliability. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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: AGAINST APPLICANT

Subparagraphs 1.a-1.bb: Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge