



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



In the matter of:)	
)	
)	ISCR Case No. 14-04820
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

11/15/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 20, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on December 24, 2014, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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* (AG), implemented on September 1, 2006.

Applicant received the SOR, and she submitted a notarized, written response to the SOR allegations dated January 13, 2015. She requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on August 6, 2015. Applicant received the FORM on August 11, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response dated September 2, 2015. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 8, 2015. The Government submitted five exhibits, which have been marked as Items 1-5 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant Exhibits (AE) A-E.

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 35 years, works as a case manager for a DOD contractor. She began her current employment in May 2014. Applicant began working in the mortgage industry in August 2002. She worked for her first employer until November 2008, when she was laid off due to a decline in the business. She worked in human resources for a health care company from November 2008 until April 2012, when she resigned due to health issues with her daughter, which resulted in Applicant's absence from work. She was unemployed from April 2012 until September 2012, when she accepted another mortgage processor position with a bank. This position ended one year later, when the bank closed the location where she worked. She was again unemployed from October 2013 until April 2014. She then worked one month part time as an administrative assistant, and she worked one week at a temporary position before accepting her current position.¹

Applicant is single, and she has a 17-year-old daughter. Applicant attended college on two separate occasions for a total of one year. She has not received a degree or certificate in any particular field.²

Applicant earned a reasonable income until she lost her job in November 2008. Before her employer laid her off, her employer reduced her monthly income because company business continued to decline. Although she immediately found a new

¹Item 3.

²Item 3.

position, her job in the health care industry paid about one-half of the income she earned in the mortgage industry. She has not yet earned income as high as she earned between 2002 and 2008. Between April 2012 and May 2014, Applicant experienced periods of unemployment, suffered a job loss, and worked part-time or temporary jobs. She exhausted her savings and moved into her parents' home to reduce her living expenses. She recently moved to her own residence, which is close to her job.³

The SOR identified 11 debts listed on the credit report dated June 6, 2014. The debts included two judgments totaling \$4,251, one education loan for \$6,239, two cable debts totaling \$162, and six other debts totaling \$15,698. The SOR debts total \$26,350. This credit report also reflects that debts in SOR allegations 1.d and 1.h-1.k occurred four to seven years ago, making most of them most likely uncollectible under state statute of limitation laws. The same credit report shows a paid collection for \$271.⁴

Applicant did not provide copies of her earnings statement to show her current income level nor did she explain the actual difference in her current income and her earlier income in the mortgage industry. She did not provide a budget, showing her current monthly expenses.

SOR allegation 1.a relates to a \$3,046 judgment. Applicant provided a copy of the court documents, showing a total judgment of \$3,563, and an agreement to pay \$50 a week on this debt beginning in October 2009. Applicant states that she paid this debt, but she failed to provide a letter from the creditor indicating the debt was paid or a copy of the line of satisfaction filed with the court.⁵

The June 2014 credit report reflects that the \$1,205 judgment identified in SOR allegation 1.b has been satisfied.⁶

The \$6,239 debt in SOR allegation 1.f relates to an education loan. Applicant provided documentation indicating that she successfully rehabilitated this loan. The loan is deferred because she lacks the funds to make a payment. Her current deferred payment and her future payments are income based. Her ability to pay will be reassessed around April 2016. Her first payment is not scheduled to begin until May 2016. The amount of her payment, if any, will be determined after her income and expenses are reviewed. This debt is addressed.⁷

³Item 2; Item 3; AE A.

⁴Item 4.

⁵Item 4; AE A; AE E.

⁶Item 4.

⁷AE C; AE D.

The June 2014 credit report reflects that Applicant disputed the \$603 debt in SOR allegation 1.i. The result of her dispute is unknown. The credit report also indicates that the original creditor identified in SOR allegation 1.j (\$1,314) sold the debt and closed its account. Applicant provided documentation showing that the new creditor obtained a judgment against her and garnished her wages. The debt was fully paid and released in March 2015.⁸

The remaining SOR debts are unpaid. Applicant advised in her response that she contacted her creditors when she lost her job in 2008 to advise of the change in her financial situation and to work out payment plans. Some creditors worked out payment plans with her, and she resolved the debt. These debts are not included in the SOR. Other creditors demanded payments that she could not make. She continues to work with her creditors to pay her debts as her funds become available. She contacted the creditor in SOR allegation 1.e. The creditor advised that she did not owe a debt nor had it referred any account in her name to collection. She continues to have an account with this creditor.⁹

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 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, these guidelines are applied 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 access to classified information will be resolved in favor of 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.

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

⁸Item 4; AE A; AE B.

⁹AE A.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for 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 an 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 information.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when she lost her job in 2008 and obtained work at half her salary. Most of the debts have not been resolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through ¶¶ 20(f), and the following are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.

Applicant lost her job in late 2008. Although she found other work, she earned a significantly lower salary. She left her job in 2012 because her daughter's health required Applicant's attention and caused Applicant to miss time from work. She lost a second job in 2013 and remained unemployed for six months. All of these incidents leading to her financial issues are factors beyond her control. She contacted her creditors and tried to develop manageable payment plans, but she was unsuccessful with several creditors and successful with others. She paid two debts or judgments through a wage garnishment. In 2014, she worked out an agreement to rehabilitate her student loans and complied with the terms of the agreement. Her student loans are being repaid based on her income. At this time, she is not required to make a monthly payment on her student loans. Her ability to repay will be evaluated once a year. Applicant agreed to a payment plan in 2009 to resolve the \$3,500 judgment, but she has not provided proof that she complied with the terms of the plan. Because she complied with other payment agreements, her statement that she paid this debt is credible. AG ¶¶ 20(b) and 20(c) partially 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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.¹⁰

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant did not provide a copy of her recent leave and earnings statements or a budget, making it difficult to assess her current monthly finances; however, her student loan documentation indicates that she has limited income. She provided documentation showing that she has worked either on her own or through garnishment actions to resolve some of her debts. Because of her lost income, she has worked at resolving her debts one or two at a time. Some creditors have refused to work with her. She disputed one debt, and the creditor for the \$60 debt has no record of a debt. Three debts totaling \$5,888 are over six years old and likely barred from collection under state law.¹¹

¹⁰In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

¹¹In a recent decision, the DOHA Appeal Board stated that security clearance decisions are not controlled or limited by statutes of limitation. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring

