



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04973
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On December 17, 2013, Applicant completed a security clearance application (SCA). On January 13, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the DOD on September 1, 2006.

In a March 9, 2015, response to the SOR, Applicant admitted all 25 allegations, with explanations, raised as 1.a-1.y. She also requested a determination based on the written record in lieu of a hearing. On May 18, 2015, the Government issued a File of Relevant Material (FORM) that contained eight attachments ("Items"). Applicant timely responded within the 30 days provided with a packet of materials. The case was assigned to me on September 3, 2015. Based on my review of the case file and submissions, I find Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 51-year-old logistician who has worked for the same defense contractor since 2013. From 1983 until 1992, Applicant served on active duty in the United States military before being honorably discharged from service. She received a Chapter 7 discharge in bankruptcy in early 1997. From 1992 through 2013, she was on active reserve duty for the military. In the interim, she attended college from 2002 until 2005. Then, due to financial issues, she was subject to a suspension from November 2005 to July 2006 during her 2005 security clearance processing, after which she was granted a security clearance, with a warning that subsequent unfavorable information could result in another suspension. The following decade was incident free. Divorced with three children, she presently lives with a cohabitant.

At issue are 25 allegations, including 24 entries regarding delinquent debts. She attributes her poor financial situation to five particular circumstances. First, her mother was ill starting in December 2011, and again in August 2013, leading to her death in September 2013, for which Applicant paid her mother's funeral expenses. Second, Applicant's military retirement in 2013 was the result of health issues. Then, a subsequent deduction in her retirement pay until October 2014 to repay a bonus payment led to additional financial distress. Third, she was laid off from her new job in June 2013 and could only find out-of-town work, which she accepted a month later. (FORM, Item 3 at 11/65-12/65) Fourth, she consequently incurred unforeseeable expenses related to a job relocation in July 2013. Fifth, as a result of her move to stay employed, she became overextended supporting two households from July 2013 to May 2014 until her family could be reunited.

The 24 debts at issue amount to over \$80,000 (1.a-1.x). While Applicant admits all debts, albeit with explanations or comments, she provided documentation to show that she has paid and resolved four SOR debts: 1.a, 1.p, 1.t, and 1.v. The debt at 1.a is her most significant debt (past-due mortgage balance of \$16,863 on a total loan balance of about \$144,192). This debt was resolved through working with her lender and an ultimate short sale of the property in May 2014, which led to her release from the lien. The next two largest debts, 1.b and 1.s, have been brought current and she has been in repayment on these debts for two years. (FORM response) The debts at 1.e and 1.w, with account numbers containing -7895, are duplicate entries for the same obligation.

Remaining, however, are 16 creditors. Of these, Applicant sent settlement proposal letters to the creditors at 1.c, 1.e-1.f, 1.k, 1.m-1.n, 1.q-1.r, and 1.u in March 2014. Samples of her letters to 1.c, 1.f, and 1.n are shown in her FORM response. She is presently making minimal monthly payments on the debts noted at 1.d, 1.g-1.j, 1.l, 1.o, and 1.x.

After the issuance of the May 2015 FORM, Applicant provided additional information regarding several of her delinquent accounts. It confirms that, with her proffered payments returned, the creditors at 1.q and 1.r could not verify her debt.

Applicant provided substantiating evidence of the status on the addressed debts between 1.a and 1.y in her FORM response. (FORM response, appendix) This includes:

- 1.a – Letter indicating mortgage was satisfied and lien released;
- 1.b – Payment history from October 31, 2014, through August 4, 2015;
- 1.c – Evidence showing correspondence to this creditor was returned by the postal service;
- 1.d – Evidence repayments of \$50 were commenced on the balance by August 2015;
- 1.e – Evidence repayments of \$20 were commenced on the balance by July 2015 on this account and on the account reflected at 1.w (duplicate account);
- 1.f – July 2015 offer to settle with jewelry company on \$1,703 balance;
- 1.g - Evidence repayments of \$10 were commenced on the balance by August 2015;
- 1.h - Evidence repayments of \$20 were commenced on the balance by August 2015;
- 1.i - Evidence repayments of \$50 were commenced on the balance by August 2015;
- 1.j - Evidence repayments of \$10 were commenced on the balance by August 2015;
- 1.k - Evidence repayments of \$10 were commenced on the balance by August 2015;
- 1.l - Evidence repayments of \$25.10 were commenced on the balance by July 2015;
- 1.m - Evidence repayments of \$10 were commenced on the balance by July 2015;
- 1.n - – Evidence showing an offer to settle the balance owed was sent to the creditor in July 2015 and response remains pending;
- 1.o - Evidence repayments of \$30 were commenced on the balance by July 2015;
- 1.p – Debt satisfied as of January 2015;

1.q – 1.r – Payments returned in April 2015 because creditor had no record of the credit card noted;

1.s – Evidence showing regular payments of \$268.90 were started by July 2014 and continued through at least August 2015;

1.t – Account paid in full as of January 2015;

1.u - Evidence repayments of \$10 were commenced on the balance by July 2015;

1.v – Account paid in full as of February 2015;

1.w – See 1.e, above;

1.x - Evidence repayments of \$10 were commenced on the balance by August 2015; and

1.y – Evidence of 1997 Chapter 7 bankruptcy discharge.

At this point, only the delinquent obligations at 1.c (\$5,477),¹ 1.f (\$1,703), and 1.n (\$367) remain unaddressed, although she has sought to initiate contact with those creditors and mailed them correspondence seeking account verification or a repayment plan. She is committed to persisting after these creditors. Overall, Applicant stresses that with the repayment of a military bonus from her retirement pay now complete, her financial situation has improved. She lives within her means. She can manage the repayment plans initiated above. Stressing that she has been working on addressing her debts for over two years in a measured manner, she asks for more time to show continued progress and complete the process. It is her intent to continue to live within her means, keep her other accounts current, and follow through on the above-referenced accounts until they are paid in full.

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 ¶

¹ Applicant's attempt to contact this creditor was returned by mail as undeliverable. FORM response at 2.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 to obtain 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had debts discharged under Chapter 7 bankruptcy proceedings two decades ago. In the past couple of years, Applicant acquired nearly \$80,000 in delinquent debts, some of which remain unsatisfied. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

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

AG ¶ 20(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.

The debts at issue are multiple in number and some remain unsatisfied. While unfortunate, the death of a family member or close friend is the type of event that may be repeated, and may leave survivors feeling responsible for their loved one's final expenses. Therefore, AG ¶ 20(a) does not readily apply in this case. However, the financial repercussions of Applicant's mother's illness and eventual death occurred around the time Applicant had to retire in 2013 for medical reasons. This was followed in short order by a required repayment to the military of a previously disbursed bonus and a lay off from her new job by June 2013. Although she found a new job within about a month, it required her to relocate, an unexpected circumstance that necessitated her supporting two households until mid-2014. In honoring her mother's obligations and being willing to relocate to secure a stable job, she demonstrated responsible behavior in the face of unforeseen circumstances. Therefore, AG ¶ 20(b) applies.

Since 2014, Applicant has attempted to honor the delinquent debts later enumerated in the 2015 SOR. She made concerted efforts to contact her creditors in writing, apprising them of her situation. She arranged to settle her largest debt (1.a) as a priority, followed next by addressing her next largest obligations through repayment plans. Between 2014 and 2015, she instituted repayment plans she negotiated with a vast majority of her creditors. Today, only three creditors (1.c, 1.f, 1.n), representing debts amounting to about \$7,500, remain neglected. That neglect, however, is not due

to inaction by Applicant. Rather, it is due either to the creditors no longer being at their former address or their failure to respond to Applicant's correspondence. While measured, Applicant's progress on her debts is apparently within her budget, well-organized, and earnestly calculated to address her debt. Consequently, AG ¶ 20(c) and AG ¶ 20(d) apply. To the extent Applicant does not deny any of the debts at issue, AG ¶ 20(e) does not 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 relevant circumstances. The available facts for such consideration are noted above. The administrative judge should consider the adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Almost since the beginning of her financial distress in 2014, Applicant started working with her creditors. She resolved her largest obligation, her past-due mortgage, and moved on to her next largest debts. She initiated contact with her creditors, advising them of her situation and offering to initiate repayment plans, and she began such repayments on the vast majority of her debts during 2014-2015, starting well before the issuance of the SOR. Her plan for addressing these debts was devised in light of her present resources and income. It was executed successfully. Some of her plans are well into repayment, others are relatively new. Regardless, measured progress is being made.

This process does not require that an Applicant address and satisfy all of her debts. Rather, it demands that an applicant devise a workable plan for addressing her debts and provide documentary evidence such a plan has been implemented. Applicant has met this criterion. Moreover, she has expressed the appropriate commitment toward working on her debts until satisfied. There are no facts indicating that her continued success might be hampered. Based on the foregoing, I find Applicant met her burden and mitigated 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: FOR APPLICANT

Subparagraphs 1.a-1.y: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge