



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



In the matter of:)
)
) ISCR Case No. 14-06124
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: [Applicant's sister], Personal Representative

04/11/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 6, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on April 2, 2015, and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2015, scheduling the hearing for December 9, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in

evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE C and D and admitted without objection. DOHA received the hearing transcript (Tr.) on December 16, 2015.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. She has worked for her current employer since 2003. She seeks to retain a security clearance, which she has held since about 2004. She attended college for a period, but she has not earned a degree. She married and divorced three times. She has three adult children.¹

Applicant bought a house in 2007 that was financed through a mortgage loan of about \$127,000. She had a cohabitant who was assisting with her mortgage loan payments, but he moved out a few months after the house was purchased. Applicant's sister handled her finances. Applicant's overtime hours at work were eliminated. Through a combination of lack of overtime hours, loss of her cohabitant's financial assistance, medical problems, and miscommunication with her sister, the full amount of the mortgage loan payments were not made and other debts also became delinquent. The house lost value in the real estate collapse and could not be sold. The house was eventually lost to foreclosure, and a vehicle was repossessed.²

The SOR alleges the past-due mortgage loan, five medical debts totaling about \$6,000, and five miscellaneous delinquent debts totaling about \$13,500. Applicant admitted owing all the debts at one time, but she stated that the \$40 medical debt alleged in SOR ¶ 1.e had been paid and the other debts were being resolved through a Chapter 13 bankruptcy case. The debts are all listed on a credit report from April 2014. The credit report also listed that the mortgage loan was "closed foreclosure redeemed," and "credit grantor reclaimed collateral to settle defaulted mortgage."³

Applicant filed a Chapter 13 bankruptcy case in August 2014. There were no claims under Schedules D and E, Creditors Holding Secured Claims and Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$146,702. That amount included \$126,067 for the mortgage loan on Applicant's foreclosed home, which did not account for the value of the house and what the mortgage holder would receive in the sale of the house.⁴

¹ Tr. at 39-42; GE 1.

² Tr. at 20-21, 30-39, 43, 49-56; Applicant's response to SOR; GE 1-5.

³ Tr. at 2-5; Applicant's response to SOR.

⁴ Tr. at 21; GE 4; AE A.

In September 2014, Applicant started paying under a plan approved by the trustee. The bankruptcy plan was approved by the court in April 2015 and modified in August 2015. The modified plan calls for \$577 monthly payments for months 1 through 9; \$0 for month 10; \$200 for month 11; \$0 for month 12; and \$70 monthly payments for months 13 through 46. The first payment was due in September 2014. The trustee confirmed that as of September 2015, Applicant had paid \$5,472 into the plan. Applicant submitted documentation establishing that she made the required monthly payments from September 2015 through December 2015.⁵

Applicant received financial counseling as a requirement of the bankruptcy. Her current finances are stable. She is able to make her bankruptcy payments, pay her other bills, and not accrue additional delinquent debts. She credibly testified that she will continue with the bankruptcy plan until completion.⁶

Applicant submitted documents and letters attesting to her excellent job performance, loyalty, work ethic, security consciousness, responsibility, dependability, adherence to rules, and trustworthiness.⁷

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 to be 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, 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(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."

Under Directive ¶ E3.1.14, the Government must 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,

⁵ Tr. at 21-27; GE 4; AE A, C, D.

⁶ Tr. at 27-28, 55-57; GE 2-5.

⁷ AE B.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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. 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed her financial problems to a combination of lack of overtime hours, loss of her cohabitant's financial assistance, medical problems, and miscommunication with her sister. The real estate collapse also was a factor because she could not sell the house for what was owed on the mortgage loan.

Applicant filed a Chapter 13 bankruptcy case in August 2014, and she has been consistently paying into the plan since the first payment in September 2014. As of December 2015, she had paid more than \$5,700 into the plan. Her current finances are stable. She credibly testified that she will continue with the bankruptcy plan until completion. Applicant has a plan to resolve her financial problems, and she has taken significant action to implement that plan. All of the above mitigating conditions are applicable.

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(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.

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.

I considered Applicant's favorable character evidence and her steady employment record. I am convinced she will maintain her bankruptcy plan payments and resolve all her financial issues.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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: For Applicant

Subparagraphs 1.a-1.k: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge