



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-00369
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Kasey Edwards, Esquire

06/01/2016

Decision

HOGAN, Erin C., Administrative Judge:

On August 8, 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 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On August 28, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 15, 2016. The case was assigned to me on March 23, 2016. On March 31, 2016, a Notice of Hearing was issued, scheduling the hearing for April 29, 2016. The hearing was held as scheduled. During the hearing, the Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered seven exhibits which were admitted as Applicant Exhibits (AE) A – G. The transcript (Tr.) was received on May 11, 2016. The record was held open until May 13, 2015, to allow Applicant to submit additional documents. Applicant timely submitted additional documents which were admitted as AE H. Department Counsel did not object to

Applicant's post-hearing submission. (HE I) Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her response to the SOR, Applicant admits to all SOR allegations.

Applicant is a 46-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. She has worked for her current employer since April 2008. She has held security clearances in the past. She is a high school graduate and has some college credit. She is single and has an adult son and two grandchildren. (Tr. at 28-29, 38; Gov 1)

Applicant's security clearance background investigation revealed that she has a history of financial problems. She failed to file her federal income tax returns for tax years 2005 – 2010. (SOR ¶ 1.a: Gov 1; Gov 5, Schedule E) She also admits to failing to file her local tax returns for tax years 2005 to 2010. (SOR ¶ 1.b: Gov 5, Schedule E) In addition, recent credit reports revealed she has seven delinquent debts. The debts include a \$4,423 judgment related to unpaid rent filed in 2014 (SOR ¶ 1.c: Gov 2 at 1; Gov 4; Gov 5, Schedule F); a local tax lien in the amount of \$1,970 filed against Applicant in 2008 (SOR ¶ 1.d: Gov 2 at 1; Gov 3 at 3; Gov 5, Schedule E); a \$55 delinquent medical account (SOR ¶ 1.e: Gov 2 at 2); a \$190 television services account placed for collection (SOR ¶ 1.f: Gov 2 at 2; Gov 3 at 2); a student loan account placed for collection, amount unknown (SOR ¶ 1.g: Gov 2 at 2; Gov 3 at 2); a student loan account that was 120 days or more past due, amount unknown (SOR ¶ 1.h: Gov 2 at 3); and a delinquent credit union account that was charged off, amount unknown (SOR ¶ 1.i: Gov 2 at 3; Gov 3 at 2; Gov 5, Schedule F).

In her answer to the SOR, Applicant admits that she failed to file her federal and local income tax returns for tax years 2005 to 2010, but states that all returns have been filed except for 2005 which was overlooked by her tax preparer. He provided a letter indicating that it was due to his oversight and he will prepare and file the 2005 federal tax return in the near future, which he did on January 4, 2016. She provided paid-in-full letters for the student loan debts alleged in SOR ¶¶ 1.g and 1.h. She indicated that she filed for Chapter 13 bankruptcy and all remaining debts are included in her Chapter 13 payment plan which was approved on November 19, 2015. Applicant states that she has made every effort to clear all negative issues that may hinder a positive background clearance. She is a devoted, trustworthy, and reliable employee. (Answer to SOR)

During the hearing, Applicant testified that she filed all of her 2006-2010 federal tax returns in March 2014. Her tax preparer overlooked the 2005 tax return and filed it in early 2016. She owes \$10,667 to the IRS. She did not file and pay her taxes because of financial hardship. She was providing financial support to her mother, her son, two grandchildren and other family members. (Tr. 23-28)

Applicant struggled to pay her debts. She was unemployed for one year in 2012. In 2014, she was diagnosed with a serious illness which aggravated her ability to pay her bills. She will undergo treatment for this illness over the next three years. (Tr. 29-31, 34, 45)

On July 10, 2015, Applicant filed for Chapter 13 bankruptcy as a means to resolve her financial situation. The plan was confirmed by the bankruptcy court on November 19, 2015. All of Applicant's debts are included in the bankruptcy. She pays \$780 a month towards the plan. The payments are automatically deducted from her paycheck every two weeks (\$360). Applicant has consistently made payments towards the plan. (Tr. 21-24; Gov 5; AE D; AE E; AE F; AE G)

Whole-Person Factors

Applicant's supervisor wrote a letter on her behalf. She describes Applicant as a dedicated employee who is an incredible asset to the office. She does an excellent job working in a very busy office that has a lot of high-level attention and officials. "She is the ultimate team player, jumping without hesitation whenever someone needs assistance, regardless of whether she is technically responsible for that portfolio." Applicant's supervisor states that she relies on her and trusts her implicitly. (AE H at 5)

Another high-ranking official in the office states that Applicant gets things done at a moment's notice and brings a positive attitude and dedication that is rare. He has worked with many office managers, but has never come across anyone who embodies Applicant's skills and character. (AE H at 6)

Another high-ranking official from another division describes his office as a "fast-paced high pressure office" that reports directly to the [top office]. His office faced a staffing crisis this past year and Applicant volunteered to help out the office, effectively doubling her workload. Because of Applicant, the office avoided "dropped balls at a critical time." He would work with her without hesitation because, if she says she is going to do something, she does it. (AE H at 7) Other former supervisors, co-workers, friends and her nephew submitted letters attesting to her work ethic, reliability, positive personality, and trustworthiness. (AE H at 8-13)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 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 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); AG ¶19(c) (a history of not meeting financial obligations); and AG ¶19(g) (failure to file annual Federal, state, or local income tax returns or the fraudulent filing of the same) apply to Applicant's case. Applicant failed to file her federal and local income tax returns in a timely manner for tax years 2005 to 2010. In addition, she acquired seven delinquent debts. She has been unable to satisfy these debts over the past several years.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his/her obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet their financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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) applies. Applicant was unemployed for a year in 2012. In 2014, she was diagnosed with a serious medical condition. Her treatment is ongoing. She provided assistance to her mother, son, grandchildren and other family members, which further complicated her financial situation. Applicant has taken steps to resolve her delinquent debts. She filed all of her tax returns. She resolved the student loan debts alleged in SOR ¶¶ 1.g and 1.h. She opted to file for Chapter 13 bankruptcy in order to resolve her debts. She does not live above her means. Based on the challenges Applicant has encountered over the past few years, I find Applicant 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) applies because Applicant attended financial counseling as a requirement when she filed for bankruptcy under Chapter 13. She is in the beginning of her Chapter 13 payment plan. Based on the timely payments towards the plan so far, it appears Applicant's financial situation is becoming more stable.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant resolved her delinquent student-loan accounts alleged in SOR ¶¶ 1.g and 1.h. Facing a serious illness and having to deal with financial issues, Applicant opted to file for bankruptcy under Chapter 13. She is making a good-faith effort to resolve her accounts.

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(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 considered the favorable recommendations of Applicant's current and former supervisors, co-workers, and friends. Applicant was unemployed for one year in 2012. She was diagnosed with a serious illness in 2014. She estimates that she will receive treatment for this illness over the next three years. She filed all of her tax returns. Considering all of the challenges Applicant has and will continue to face within the next few years, her decision to file for Chapter 13 bankruptcy was reasonable. She is attempting to resolve her debts through bankruptcy and is making timely payments towards the plan. Security concerns under financial considerations are mitigated.

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.i:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge