



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



In the matter of:)
)
) ISCR Case No. 15-00492
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

05/18/2016

Decision

DAM, Shari, Administrative Judge:

Applicant began accumulating delinquent debts in 2009. She has resolved some of the debts and has a plan to resolve other debts. She mitigated the financial security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 30, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) for re-investigation. On August 25, 2015, the Department of Defense (DoD) 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 for SORs issued after September 1, 2006.

On September 23, 2015, Applicant answered the SOR (Answer), and requested a hearing. On February 12, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me and issued a hearing notice, setting the case for March 1, 2016. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through L into evidence. All exhibits were admitted without objections. The record remained open until March 25, 2016, to give Applicant time to submit additional exhibits. She timely submitted an exhibit, which I marked as AE M and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on March 11, 2016.

Findings of Fact

Applicant admitted all the allegations contained in the SOR, except those in ¶¶ 1.b, 1.f, 1.j, 1.k, and 1.q, which she denied. Her admissions are accepted as factual findings.

Applicant is 47 years old and divorced for the second time in May 2014. She and her former husband have a 9-year-old daughter. She has full custody of the child. She also has a 26-year-old son from her first marriage. She earned three associates' degrees. She has worked for her current employer, a defense contractor, since 2003. Her supervisor is aware of this hearing and the financial issues underpinning it. (Tr. 15-19.) She has held a security clearance since 2004. (Tr. 22.) Applicant's disabled mother lives with her and her daughter. (Tr. 39.)

Applicant stated that her financial problems began when she and her second husband separated in 2009, and she did not have the joint income available for her living expenses. Her husband did not give her child support until a year and a half before their divorce was final in 2014. (Tr. 23-24.) She said she timely files her income tax returns and usually receives a refund. (Tr. 56.)

Based on credit bureau reports (CBR) from June 2014, November 2014, July 2015, and February 2016, the SOR alleged 22 delinquent debts totaling \$21,439, which accumulated between 2009 and 2014. (GE 2, GE 3, GE 4, and GE 5.) Included in those debts were unpaid medical bills, a mortgage, student loans, and her mother's debts, for which Applicant signed as a co-debtor. (Tr. 31.) The status of the SOR debts is as follows:

Debts Resolved or Resolving:

1. The mortgage foreclosure, listed with an outstanding balance of \$7,105 in SOR 1.a, is being resolved through a loan modification that she began negotiating in

October 2014, but did not become effective until June 2015 because her former husband would not give her a quitclaim deed until then. The modified mortgage balance includes the outstanding balance. Her new monthly payment is \$441. It is being resolved. (Tr. 26; AE L.)

2. The \$2,340 charged-off account alleged in SOR 1.c is Applicant's mother's responsibility, and her mother is making monthly payments of \$100 on the debt. The balance is \$1,500. The \$2,409 debt listed in SOR 1.r is a duplicate of that debt. (Tr. 28-29, 49; AE M.) It is being resolved.
3. These SOR debts are on a payment plan with the same collection agency: 1.(h) for \$271; 1.i)for \$248; 1.m for \$422; and 1.o for \$422. Applicant co-signed with her mother on these accounts. Her mother is making monthly payments of \$100. (Tr. 36-40, 46; AE E.) They are being resolved.

Unable to Locate Creditors

4. Applicant credibly testified that she is unable to locate the creditors for the following SOR debts: 1.b for \$752 (Tr. 27-28); 1.f for \$381 (Tr. 34); 1.j for \$120 (Tr.40); 1.k for \$96 (Tr. 43); and 1.q for \$109 (Tr. 48).

Debts To Be Paid

5. Applicant intends to arrange payments for the following medical debts listed on the SOR upon receipt of her 2015 tax refund: 1.e for \$453 (Tr. 32-33); 1.g for \$355 (Tr. 34-35); 1.l for \$70 (Tr. 44); and 1.n for \$566 (Tr. 45).
6. Applicant intends to address the \$714 delinquent debt in SOR 1.d with monthly payments of \$25, as soon as she receives her tax refund. She contacted the creditor and established a payment plan. This is marital debt from her second marriage. (Tr. 30.)
7. Applicant was making payments on the medical debts in SOR: 1.s for \$123; 1.t for \$150; and 1.u for \$167. She thinks she paid about \$80 to the collection agency for the debts but was unable to make the final payments because she did not have enough money to do so. She intends to pay them. (Tr. 51.)
8. Applicant's student loans, which total \$50,000, are past due in the amount of \$734, and not \$3,003 as alleged in the SOR 1.v. She was unable to make the monthly payments of \$245 in the winter months because she had to pay the monthly heating bills of \$309. She intends to address the debt as money becomes available. (Tr. 51-54.)

Disputed Debt

9. Applicant disputed the \$1,216 debt in SOR 1.p, related to her son's stolen cell phone. She stated that she reported it to the creditor, but it did not promptly close the account. (Tr. 47-48.)

Applicant's annual salary is \$51,400. She receives \$349 a month for child support. (Tr. 21-22.) Her net income and expenses are about \$2,500. She anticipates receiving a \$4,000 income tax refund for 2015, from which she will pay a \$1,000 loan from her sister, a \$1,500 loan from her mother, and a creditor for a \$200 truck bill. She will use the remaining money to reduce the other delinquent debts. (Tr. 54-55.) She spoke to a financial counselor, who recommended that she sell her house as a way of resolving her financial issues. (Tr. 55; AE K.) She did not want to sell her home and was able to ultimately re-negotiate the mortgage.

Applicant submitted a letter from a past supervisor for seven years. He stated that Applicant "is a person of unquestionable moral and ethical standards who has gained the respect of her seniors, subordinates, and peers alike." (AE C.) Her manager wrote that Applicant has displayed "ethical behavior" and takes responsibility for her work. (AE B.) Her work performance review for 2015 noted that she achieved and/or substantially achieved work goals or commitments. (AE D.) Applicant submitted copies of emails she sent to her security officer notifying him of the financial problems she experienced after she separated in 2009 and before she filed for divorce in 2011. She also sent him an email in 2013 regarding financial counseling and when she began contemplating bankruptcy in 2014. (Tr. 64; AE A.)

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 avoided drawing 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, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

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.¹

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of being unable to meet financial obligations, which began in 2009 and continues to date. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

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

Applicant offered evidence that her financial problems arose as a consequence of her separation from her husband in 2009 and their subsequent divorce in 2014. She did not receive child support for an extended period during their separation. These were circumstances beyond her control. Applicant provided some documentation that she attempted to address the debts while they were accumulating. The evidence establishes some mitigation under AG ¶ 20(b).

Applicant said she sought credit counseling but was unhappy with the advice she received regarding the recommendation for resolving her debts, by selling her house.

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

She provided information that since June 2015 she has been resolving her mortgage, the largest debt which is listed twice on the SOR; and that her mother is paying five of the listed debts. These seven debts total \$13,174 of the SOR \$21,439 alleged amount. Her student loans have a delinquency amount of \$734 and not \$3,003 as alleged. She contacted a couple of her creditors and discussed payment plans, which she will implement when she has money available. There is sufficient evidence to conclude that her finances are slowly coming under control, as a consequence of her good-faith efforts to resolve debts. Thus, the evidence establishes mitigation under AG ¶ 20(c) and AG ¶ 20(d). Applicant notified the creditor of the stolen cell phone, but the company did not act promptly on the matter, which led to her dispute of the debt in SOR 1.v. She established some mitigation under AG ¶ 20(e) as to this debt.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is an intelligent 47-year-old employee of a defense contractor since 2004. She is effective in her position, and has gained the respect of her employer. She has a history of financial difficulties dating back to 2009, when she separated from her second husband and no longer had a dual household income. At this time, she is resolving over half of the SOR-alleged debts, and there is no information in the record that would lead me to believe she will not continue to do so. While testifying, she was credible and forthright in presenting her case. She submitted evidence that she apprised her security officer of her financial problems in 2009, 2011, and 2014. Overall, the record evidence leaves me without doubts as to Applicant's present eligibility and suitability for a security clearance. Applicant met her burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.v: 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.

SHARI DAM
Administrative Judge