



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



In the matter of:)
)
-----) ISCR Case No. 14-06507
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

February 9, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on February 27, 2014. (Item 3.) On May 30, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) regarding Applicant. 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 on September 1, 2006.

Applicant answered the SOR in writing, with supporting documentation, on June 16, 2015 and requested a decision by an administrative judge without a hearing. (Answer.) Department Counsel submitted the Government's written case (FORM) to

Applicant on July 28, 2015.¹ Applicant acknowledged receipt of the FORM August 3, 2015. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information on or before August 31, 2015. Department Counsel had no objection to my considering the documents, and they are admitted collectively as Applicant Exhibit A. The case was assigned to me on September 3, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 36 and married. She is employed by a defense contractor, and seeks to obtain a security clearance in connection with her employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR (1.a through 1.j). She also submitted additional information to support her request for a security clearance.

The SOR lists nine delinquent debts (1.a through 1.i), including delinquent Federal taxes from 2007, totaling approximately \$15,550. The existence and amount of the debts is supported by a credit report dated April 4, 2014. (Item 5.) The SOR also alleges that Applicant had her debts discharged under Chapter 7 of the Bankruptcy Code in February 2008(1.j).

The current status of the debts, and taxes, is as follows:

1.a. Applicant admitted that she owed the Internal Revenue Service (IRS) \$8,183 in back taxes for the 2007 tax year. A tax lien was filed for that year. Applicant provided documentation showing that she had a payment arrangement with the IRS, and was successfully following it. As of July 2015 the back taxes had been reduced to \$4,114.77. Applicant also provided documentation showing that she obtained a personal loan in August 2015 in a sufficient amount to pay off her remaining tax lien. She further states that the IRS was paid in full on August 31, 2015. (Answer at 4-8; Applicant Exhibit A at 1-13, 29-35.) This debt is resolved.

¹Department Counsel submitted five Items in support of the SOR allegations. Item 4 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on April 18, 2014. It was never adopted by Applicant as her own statement, or otherwise certified by her to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admissions, it is also cumulative.

1.b. Applicant admitted that she owed a judgment in the amount of \$309. She paid the judgment in full, including fees, on May 11, 2015. (Applicant Exhibit A at 47-48.) This debt is resolved.

1.c. Applicant admitted that she was indebted for a bank credit card in the amount of \$650. This debt is the same as that set forth in allegation 1.h. Applicant showed proof of payment of this debt in December 2014. (Answer at 10-18.) This debt is resolved.

1.d. Applicant admitted that she was indebted for a medical debt in the amount of \$70. Applicant showed proof of payment of this debt in October 2014. (Answer at 19-20.) This debt is resolved.

1.e. Applicant admitted owing a creditor \$3,917 for a repossessed automobile. Applicant provided proof of payment of this debt in May 2015. (Answer at 21-24.) This debt is resolved.

1.f. Applicant admitted owing a bank \$70. Applicant provided proof of payment of this debt in May 2014. (Answer at 25-26.) This allegation is resolved.

1.g. Applicant admitted owing a mobile telephone company \$148 on a past-due account. Applicant provided proof of payment of this debt in July 2014. (Answer at 27-28.) This allegation is resolved.

1.h. This debt has been discussed under subparagraph 1.c, above. This allegation is resolved.

1.i. Applicant admitted owing a past-due debt in the amount of \$911. Applicant provided proof of payment of this debt in June 2015. (Answer at 29-30; Applicant Exhibit A at 60-61.) This allegation is resolved.

1.j. Applicant admits filing for Chapter 7 bankruptcy protection in October 2007. She was discharged of all of her dischargeable debts in February 2008. (Answer at 31.) Applicant has not filed for bankruptcy protection again. Under the particular circumstances of this case, the fact of her bankruptcy eight years ago has no current security significance.

Applicant supplied information showing that her current financial situation is stable. She is gainfully employed with a good income, and was able to qualify for a mortgage and purchase a house in 2015. (Applicant Exhibit A at 14-44.)

Policies

Security clearance decisions are not made in a vacuum. 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 are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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 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, "The 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."

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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 conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant, by her own admission, and supported by the documentary evidence, had nine delinquent accounts that she formerly could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Applicant has successfully paid all of the debts set forth in the SOR, many of them before issuance of the SOR. She also has qualified for a mortgage in the last year, showing that her financial situation is now stable. Accordingly, I find that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d). I also find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Since both of these mitigating conditions apply to the facts of this case, Guideline F is found for Applicant.

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 relevant circumstances. 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 administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems in the past, they have been resolved, and she has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports granting her request for a security clearance.

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 through 1.j: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge