



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-00259
)	
Applicant for Security Clearance)	

Appearances

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

04/27/2016

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by the delinquent debts she incurred after a marital separation. She responsibly addressed her financial situation by reducing her monthly expenses, contacting her overdue creditors, and resolving her debts. Clearance is granted.

History of the Case

On July 25, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a determination based on the administrative (written) record.

¹ This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

On October 26, 2015, Department Counsel prepared its written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings, Applicant's security clearance application (SCA), a summary of her security clearance background interview, and an August 2014 credit report; which were admitted into the record, without objection, as Exhibits 1 – 5.

On November 25, 2015, the Defense Office of Hearings and Appeals received Applicant's response to the FORM (Response). The Response has been marked Ex. 6 and, without objection, was admitted into the record.² On January 20, 2016, I was assigned Applicant's case.

Findings of Fact

Applicant, who is in her mid-twenties, is an administrative assistant for a federal contractor. She served in the U.S. military on active duty from 2009 to 2012, receiving an under honorable conditions (general) discharge. She held a security clearance while in the military. After leaving the military, Applicant was unemployed for about 20 months, except for about two months when she held a job as a cashier at a fast-food restaurant. She was hired by her current employer in approximately mid-2014.

Applicant married in 2010. She and her husband separated in 2014, shortly after the birth of their only child. At the time, Applicant's husband was the higher wage earner. Despite this, he is not providing Applicant with financial support or paying his share of the marital debts. She is bearing the financial responsibility of raising their child. Their divorce is pending. Applicant notes that the part of the reason for the divorce is her estranged husband's financial irresponsibility.

Applicant incurred a number of debts while unemployed and underemployed. She disclosed her troubled financial situation on her SCA. She then discussed her finances, including her past-due debts, during her background interview.

Applicant moved in with her mother a few months before she and her husband legally separated. This allowed Applicant to reduce her monthly expenses. She provided documentary proof of having paid the SOR debts referenced at 1.a, 1.b, and 1.h, totaling \$5,157. (Ex. 1; Ex. 6 at 8-9, 13.) She also provided documentary proof that she is making monthly payments towards the \$1,675 in medical debts referenced in SOR 1.c and 1.d. (Ex. 6 at 10.) She has consistently disputed the \$903 cell phone bill alleged in 1.f since first becoming aware of it during her background interview in 2014. She contacted the creditor and filed a written dispute contesting the debt. (Ex. 4 at 5; Ex. 6 at 11-12.) She is currently liable for the balance owed on her estranged husband's car. The car was repossessed after her husband stopped paying the monthly loan payments. This car-related debt is alleged at SOR 1.e and 1.g. The debt has been charged off by the creditor.

² Applicant's receipt of the FORM and Department Counsel's submission noting the Government had no objection to Ex. 6 are included in the record as File Exhibits I and II, respectively.

Applicant has addressed six of the eight SOR debts. She convincingly states that if the car-related debt is not resolved through the divorce, she will contact the creditor and work out a payment arrangement. She provided documentary proof of paying her major monthly expense, her child's daycare bill, in a timely and consistent manner. (Ex. 6 at 3-7.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an 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.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is explained at 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.

Applicant's recent financial problems raise the financial considerations security concern. The record evidence establishes the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

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 and provides documented proof to substantiate the basis of the dispute.

Applicant's financial problems stem from unemployment and underemployment, which was then exacerbated by the separation from her husband. Notwithstanding these matters, Applicant has taken positive and concrete steps to address her financial

situation. She reduced her monthly expenses by moving in with her mother. She resolved or is resolving six of the eight SOR debts. Although some debts remain, she is living within her means and addressing her debts as her finances allow. The remaining SOR debts do not undercut the significant efforts she has made to take control of her finances and satisfy her overdue creditors. Furthermore, her demonstrated track record of debt repayment provides sufficient assurance that she will resolve any remaining debts and continue to manage her finances in a manner expected of clearance holders.³ AG ¶¶ 20(a) through 20(e) apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.⁴ Applicant met her burden.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been upfront and candid about her troubled financial situation since the start of the security clearance process. Applicant's honesty and responsible action in addressing her financial circumstances mitigate the security concerns at issue. Overall, the record evidence leaves me with no questions or doubts about her eligibility for access to classified information.

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 B (Foreign Influence)	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant

³ ISCR Case 14-00504 (App. Bd. Aug. 4, 2014) (adverse decision reversed, because by addressing and resolving about half of the SOR debts applicant had demonstrated that s/he possessed the degree of reliability and trustworthiness contemplated by Guideline F).

⁴ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

Conclusion

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

Francisco Mendez
Administrative Judge