



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



In the matter of:

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ISCR Case No. 15-00731

Applicant for Security Clearance

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2016

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated August 6, 2015. 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) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 3, 2016. A notice of hearing was issued on May 2, 2016, scheduling the hearing for May 20, 2016. Government Exhibits (GX 1-5) were admitted into the record. Applicant testified and submitted Applicant Exhibits (AX A-T). The transcript was received on June 1, 2016.

Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), and provided explanations.

Applicant is a 44-year-old system administrator for a defense contractor. She obtained her undergraduate degree in 2003. She attended a university and took several graduate courses, but she did not obtain a graduate degree. She is married and has one daughter and two stepchildren. Applicant has worked for her current employer since 2005; however, she has worked as a contractor since 1998. (AX R) She has held a security clearance since 1998. (GX 1)

Applicant attributes her financial issues to the economic downturn in 2008; her husband's ill health and surgery; and his \$730 monthly child support for his son. She paid bills, but the medical and hospital bills were more than she could pay. At the same time, Applicant's step-son was hospitalized for a mental health issue twice in 2009 and 2010. (Tr. 35) Her husband's wages were garnished for the hospital bills, as well as Applicant's wages. Applicant's husband took a pay cut to obtain a job closer to home, which affected their finances. They both commuted to work and paid high gas prices. There was also a four month custody battle between Applicant's husband and the mother of the child, and legal fees were incurred. (Tr. 71)

When Applicant's mortgage payment became late, she took money from the family's retirement savings to make the payment. They also took hardship loans to keep afloat. Again in 2011, their step-son was hospitalized. Applicant made payments on the medical bills. She prioritized her bills and wanted to provide for her family. Applicant's husband is also responsible for 50% of his son's medical bills.

The incredible stress of the hospitalizations for the 16 year old stepson and the resultant severe financial stress due to medical and hospital bills were the focus of Applicant. However, in providing a stable environment for the family, other accounts were not a priority. Her focus is now on paying bills on time and creating a stable financial environment. Applicant and her husband both have higher salaries. She and her family live modestly and do not live beyond their means. Applicant's school loans were the result of her attempt to gain more knowledge to better her employment opportunities.

The SOR alleges 13 delinquent debts totaling about \$31,000. Applicant admits responsibility for the debts and provided documentation for accounts that are satisfied or in a repayment plan. The Government stipulated that SOR debts ¶¶ 1a, 1b, 1d, and 1.h have been settled and paid. (Tr. 9; AX A; B; E)

As to SOR allegation 1.c, a loan from a university in the amount of \$1,929, is in a repayment plan. She makes monthly payments of \$64.25, which are directly debited from her checking account. (AX D)

As to SOR allegation 1.e, for a medical bill in the amount of \$40, which was overlooked by Applicant, it was paid last year. (AX F)

As to SOR allegation 1.f, for a student loan that is 180 days or more past due in the amount of \$1,765, Applicant has recently consolidated the loan through a federal program. (AX G) She had been making payments in 2012 for about nine months in the amount of \$291. At certain periods the loans were in forbearance. (Tr. 47)

As to SOR allegation 1.g, for a collection account in the amount of \$5,891, this was for a computer account. It was bought by another agency. Applicant notes the original amount was approximately \$3,000. She has a repayment plan with the current collector. Each month \$50 is deducted from her checking account. She has made the first payment. (AX H) Her goal is in six months to try to settle the amount. (Tr. 22)

As to SOR allegation 1.h, for a home equity loan in the amount of \$15,688, payments were made from 2007 to 2008 to the creditor, but eventually Applicant could not pay. She tried for a while to make other arrangements. In 2015, the mortgage company forgave the lien securing the mortgage. (AX I) Applicant reported the income on her taxes.

As to SOR allegation 1.i for a credit card in the amount of \$1,454, Applicant has a payment plan agreement of \$72 over six months. Two payments have been made. The agreement noted a settlement of \$436. At this point, Applicant owes the company \$291. She has three remaining payments. (Tr. 24; AX J)

As to SOR allegation 1.j for a collection account for an undetermined amount, the credit card account has been removed from Applicant's credit reports. She researched the issue and called the reporters but it has been removed. (AX K)

As for the SOR allegation 1.k for a charged-off account in an undetermined amount, this was a credit card opened in 2007. Applicant has a payment plan with them. Her monthly amount is \$50. The current balance is \$942. She provided proof of the first payment. (AX L)

As to SOR allegation 1.l for a delinquent debt in an undetermined amount, Applicant has a payment arrangement. She has settled the account for \$235. She has made two payments of \$58.50 each. Her balance is \$117.60 (AX M)

As to SOR allegation 1.m for a student loan from Applicant's undergraduate days, she had a forbearance but defaulted. (Tr. 60) She now has a plan to pay \$167 a month. However, she wants to consolidate this loan with the other student loan as noted above. (AX N)

Applicant candidly explained that when her husband was sick and their stepson was hospitalized and they did not have enough money for all their bills, she just ignored some creditors and wanted them to go away. (Tr. 61) She admits that she got “caught up in life.” She took a part time job for a period of time and her husband has a second job now. She also worked on Friday and Saturday nights in a restaurant. (Tr. 62) She is current on her taxes and has no unresolved tax issues.

Applicant submitted employee appraisals from 2005 to 2015. She is usually rated as “exceeds expectations” in most areas. She is described as technically skilled, well liked and hard working. (AX O) Applicant presented work related certificates and bravo awards from the years. (AX P)

She submitted six character letters from current and past employers. She is noted for outstanding service on various projects. She is a team worker and produces in an exceptional manner. A colleague states that she is an exemplary employee who always does more than required. She is a dedicated member of any team. Her program manager notes that she provided excellent technical support and is always professional and forthright. Applicant is praised as someone who is organized, fair, discreet and very knowledgeable. A program analyst who has known her for more than nine years and knows about the financial considerations security concern, states that she has gone through a rough period and overextended some credit cards. She has nothing to hide and is in a better financial place and is showing that she takes care of her responsibilities as well as her family. (AX Q)

Applicant has a budget. Her monthly net income is \$6,412. She has a net remainder of \$894. She has no new debt. (AX S) She has a savings account. She included her debt payments in her budget plan. She attends church regularly and tithes to the church, but she is going to give less and use more to pay bills. (Tr. 68) Applicant’s step-son will turn 18 in 2017, and the child support ends. Since they now have jobs closer to home, the large gas bills are no longer at issue. Applicant’s income is now \$86,000 per annum. At the time of the initial financial difficulties it was about \$65,000. (Tr. 72) Her husband now earns about \$62,000. Applicant satisfied several non-SOR judgments in 2012. Her 2015 credit report reflects many accounts with zero balance. (GX 5)

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to the delinquent debts that are listed in the SOR. The Government produced credible evidence to establish the debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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;

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

(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; and

(f) the affluence resulted from a legal source of income.

Applicant experienced many circumstances that were beyond her control. Her husband had surgery in 2008; her stepson was hospitalized a number of times; wages were garnished to pay for medical bills; there was an economic downturn and bills mounted that could not be paid. Applicant has paid and the Government stipulated a number of SOR bills are paid. As to each SOR allegation, she has either settled or is in a repayment plan. She admits that she incurred student loans in an effort to better employment opportunities. She paid several non-SOR bills and had been paying on accounts, including student loans and mortgage but paid until she could no longer maintain the regular accounts. She kept providing for her family. She acted in good-faith while under great stress. She worked two jobs and did not live extravagantly. She is now in a better financial position. Her step-son will no longer require child support as

of next year. She used her savings to pay as many bills as she could .She produced evidence of payments. She presented sufficient information to carry her burden of proof under this guideline.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is a system administrator. She has held a security clearance since 1998. She is married and has one daughter and two stepsons. She and her husband were caught in the 2008 economic downturn. Her husband had surgery and her stepson was hospitalized a number of times. There were many hospital and medical bills as a result of these events. Applicant's and her husband's wages were garnished to pay the medical bills. Applicant worked two jobs at one period of time and her husband switched jobs so that he would not have a long commute and higher gas bills to pay. The government stipulated that several SOR bills were paid at the beginning of the hearing. Applicant provided for her family.

Applicant went to college to gain more knowledge to help her employment opportunities. She paid on the student loans for a time, but eventually she had to stop paying. She now has a plan which she is implementing for those loans. She has worked hard over the years and has many awards. She presented many letters of recommendation. Her performance evaluations are excellent. Her husband's child support and custody battle exacerbated the financial issues. They both have higher salaries and are on a stable financial track . She was candid that she was overwhelmed and wanted to ignore things at times but she has a record of many years of reliability that help mitigate the financial considerations concern in this case.

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.m: 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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge