



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



In the matter of:)	
)	
)	ISCR Case No. 17-03402
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2019

Decision

Curry, Marc E., Administrative Judge:

Applicant’s financial problems were generated by circumstances beyond her control. Over the past 18 months, she has rehabilitated her finances either by paying debts in their entirety, paying them incrementally through payment plans, or successfully disputing them. I conclude she has mitigated the security concerns. Clearance is granted.

Statement of the Case

On October 13, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On December 14, 2017, Applicant answered the SOR, denying all of the allegations except subparagraph 1.d. She requested a hearing, whereupon the case was assigned to me on July 20, 2018. On September 13, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for October 3, 2018. The hearing was held as scheduled. I received six Government exhibits (GE 1 – GE 6) and seven Applicant exhibits (AE A - AE J). I also incorporated into the record a copy of the discovery letter that Department Counsel mailed to Applicant dated February 8, 2018 (Hearing Exhibit I). At the close of the hearing, I left the record open until October 19, 2018 for Applicant to submit additional documents. Within the time allotted, she submitted an additional exhibit that I incorporated into the record as AE K. The transcript (Tr.) was received on October 11, 2018.

Findings of Fact

Applicant is a 37-year-old single woman. Since 2016, she has worked for a defense contractor as a sustained coordinator. Her duties consist of assisting agencies that are required to receive cybersecurity services. (Tr. 34) She is a first-time security clearance applicant.

The SOR alleges that Applicant failed to file her federal and state income taxes for 2015 and 2016, and that she has delinquent consumer debt in the approximate amount of \$15,000. Applicant admits that she has been struggling with her finances over the years, and attributes her problems to a 16-month period of unemployment between December 2011 and May 2013, that occurred after she was laid off. (Answer at 1) After regaining employment in May 2013, it took her several years to regain financial stability.

Applicant's failure to file her federal income tax returns on time for tax years 2015 and 2016 is alleged in SOR subparagraph 1.a. In December 2017, Applicant contacted the IRS, filed her overdue tax returns and arranged an installment payment. She has been repaying the delinquency in monthly increments ranging from \$135 to \$150 since then. (Tr. 45; AE J; AE K at 4-5)

Delinquencies from tax years 2011 and 2013 are also included in the installment plan. (AE J) As of October 18, 2018, the balance from Applicant's 2016 federal income tax return was \$600. (AE B at 3) The balance due from Applicant's 2015 federal income tax debt is unknown from the record.

Applicant has filed both her 2015 and 2016 state income tax returns. As of July 2019, the balance totaled approximately \$750. (AE A at 3) Since August 2018, Applicant has been repaying this delinquency through \$46 monthly payments. (AE A at 3) Per the state comptroller, Applicant's payment plan is currently in good standing. (AE A at 3)

SOR subparagraph 1.c alleges a loan delinquent in the amount of \$11,359. Applicant denies this debt. (Answer at 2; GE 5 at 3) She contacted each of the credit reporting bureaus to dispute this debt. Subsequently, each of the credit reporting agencies removed the debt from the respective credit reports.

Subparagraph 1.d is a delinquent utility bill totaling \$1,959. Applicant paid this debt in March 2018. (AE C)

Subparagraph 1.e is a delinquent credit card totaling \$631. By October 2018, Applicant had paid this account in full. (GE I at 2)

The debt alleged in subparagraph 1.f totals \$609. Applicant contacted the creditor, negotiated a settlement, and paid it in June 2016. (AE E)

The debt alleged in s subparagraph 1.g is a delinquent dental bill totaling \$445. Applicant satisfied this debt in September 2018. (AE F at 2)

The debt alleged in subparagraph 1.h is a delinquent medical bill totaling \$198. Applicant satisfied this debt in September 2018. (AE D)

Applicant earns \$86,000 per year. She supplements her salary by driving an Uber, generating an additional \$6,000 annually. (Tr. 73) She has \$1,800 of monthly discretionary income (Tr. 18) She has \$800 in savings and \$7,000 invested in a 401k account. (Tr. 74)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 the adjudicative process. The administrative judge’s overall 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 national security eligibility 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. 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 to obtain 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth 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 or sensitive information.

Applicant’s financial delinquencies and her failure to file her 2015 and 2016 federal and state income taxes on time trigger the application of the following disqualifying conditions under AG ¶ 19:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax, as required.

Applicant’s financial problems stemmed from a 16-month period of unemployment after she lost her job in December 2011. Over the past 18 months, she has gradually been satisfying her debt. Currently, she has satisfied all of her delinquent commercial debt, except the one alleged in subparagraph 1.c, which she disputed, and had removed from her credit reports. She has filed her delinquent state and federal income tax returns and has been steadily paying the outstanding balances through payment plans.

Applicant has ample discretionary income to make ends meet. She has bolstered her financial stability by obtaining a part-time job. Under these circumstances, the following mitigating conditions under AG ¶ 20 apply:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) . . . there are clear indications that the problem is being resolved or is under control;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

I conclude Applicant has mitigated the security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors under AG ¶ 2(d), as set forth below:

(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.

Upon considering the circumstances surrounding the incurrence of the debt, Applicant's satisfaction of all of the commercial debt, and the progress toward satisfying her income tax delinquency, I conclude that Applicant has rehabilitated her finances, making the possibility of recurrence of her financial problems unlikely.

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.h: For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge