



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 18-02204

Appearances

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

08/21/2019

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On October 4, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) 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 on or after June 8, 2017.

In a response notarized on November 13, 2018, Applicant admitted all allegations. She also requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on March 7, 2019.

On June 5, 2018, a notice was issued setting the hearing for June 12, 2019. Applicant waived her right to 15 days notice and chose to proceed on the available date. The hearing was convened as scheduled. The Government offered five exhibits (Exs.), noted as Exs. 1-5, and Applicant presented 12 documents, marked as Exs. A-L. With no objections, all exhibits were accepted into the record. Applicant was granted through June 24, 2019, to submit any additional materials. The transcript (Tr.) was received on

June 25, 2019. After a request for an extension of time was granted, a final file of materials was offered by Applicant and admitted without objection as Exs. M-T on July 9, 2019. The record was then closed. Based on the testimony, materials, and record as a whole, I find Applicant mitigated security concerns.

Findings of Fact

Applicant is a 54-year-old program lead/project manager who has served in the same capacity for over three-and-a-half years. She has earned a bachelor's degree in project management, as well as a master's degree in project management and information technology. She also earned a second master's degree in cyber forensics. She is single and has no children. There is no evidence of formal financial counseling.

From October 1985 to November 1989, Applicant served on active duty in the United States military. After a period of time as a reservist, she returned to active duty in early 1992, where she remained until retirement at the level of E-7 in November 2008. From that time until March 2013, she was employed by a defense contractor. From March 2013 until May 2014, Applicant was unemployed before accepting a brief temporary position in order to generate income. She was then intermittently unemployed from August 2014 to September 2015. Unemployed from October 2015 until December 2015, she accepted her present position at the end of 2015. (Tr. 57)

At issue are six delinquent debts, five of which are related to federal or state taxes. In both types of obligations, tax liabilities were acquired which Applicant had insufficient income or resources to pay. (Tr. 34) Her federal tax issues are reflected in the SOR at allegations 1.a (\$11,554 November 2015 tax lien for tax year 2014 taxes owed), 1.b (\$2,788 for related sums owed for tax year 2013), and 1.c (\$10,598 for unpaid tax from tax year 2014).

Applicant began corresponding with the Government concerning her federal tax issues in 2015. (Tr. 51, 53) Other strides were made in 2016 and in 2017 to address her federal tax obligations and work out a settlement or reduction. By August 2018, she started making arrangements to commence a comprehensive repayment agreement with the Internal Revenue Service (IRS). (Tr. 49, 51) The IRS dallied in arranging a repayment terms. Applicant had no objection to the delays because she "knew that if [she] started paying [the debt balance] back, the chances of them offering any type of forgiveness of the early withdrawal fees, penalties, interest, and so on was nil, once [she] started paying." (Tr. 50, 53) Consequently, she did not push the issue because she hoped her liability would be reduced to just the taxes originally owed.

In May 2019, she tried to contact the IRS by telephone "to determine the status [of the debt] because she had not seen any correspondence" in recent months conveying any information except the IRS needed more time to evaluate her situation. (Tr. 50) She then discovered that the case had been closed with no action by the IRS to reduce the amount owed, and that the matter had been transferred to collections. (Tr. 50) Consequently, payment of \$200 on an installment agreement with the IRS was

made toward her 2013 tax balance on May 21, 2019, followed by another payment in early June 2019. (Ex. C at 5)

Applicant showed all taxes owed for 2013 (1.b) have been paid and, at this point, she has a credit of \$420.22 on that account. (Ex. M at 2) However, a related lien (1.b) “will not be released now until ALL back taxes, penalties, and interest have been paid.” (emphasis in the original) (Ex. J) As for the tax liabilities owed for tax year 2014 (1.c), its remaining balance, which includes accrued penalties and interest, is in repayment as per the payment plan implemented in May 2019 and referenced above. (Ex. M)

Applicant also owed her state sums at SOR allegations 1.d (\$3,766 for a tax lien dated March 2015) and 1.e (\$3,598 for unpaid state taxes). She provided documentation showing that the lien at 1.d has been satisfied and released. (Ex. Q) She also showed that a repayment plan on the debt noted at 1.e was initially implemented around September 2017, then a payment schedule was initiated. A new arrangement was then established in August 2018. (Exs. R-S) Applicant showed she is currently in good standing on that plan. (Ex. S) As of July 3, 2019, Applicant owed a balance of about \$812. (Ex. T) Applicant also provided a copy of a July 3, 2019, check dated July 3, 2019, and made out for the sum of approximately \$213 to be sent to her state comptroller toward that balance. (Ex. T)

In addition, Applicant has a sixth delinquent debt at issue. It is for \$232,919 and is related to student loans obtained between 2009 and 2017 (1.f). At the time of the October 4, 2018, SOR, they were noted as being in forbearance until approximately October 2018. Applicant finished her education in 2017. Payments were deferred during her enrollment. She then had them in forbearance due to her circumstances. (Tr. 55) Applicant showed that the related loans were subsequently taken out of forbearance and have been in timely repayment. (Ex. E at 14-24) She currently pays approximately \$644 a month on the total balance due.

At present, Applicant is generating sufficient income to meet her regular obligations while making strides on her tax and student loan obligations. She has a monthly net remainder of about \$940, which she puts into savings or into her budgeting for future payments. (Tr. 59) She bought a new car in 2017 in order to replace an older model and secure safer travel for the approximately 94,000 miles she puts on her vehicle per year commuting. She uses credit cards less, and otherwise tends to economize. Applicant recently sold a horse which had health issues, thus yielding her savings from veterinary and other care.

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 list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

Here, the Government offered documentary evidence reflecting that Applicant has numerous delinquent debts. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(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.

Lacking disputes or evidence of financial counseling, three conditions could mitigate the finance related security concerns posed here:

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

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial distress began with a period of unemployment lasting from March 2013 to May 2014. She subsequently experienced other, shorter, periods of unemployment before starting her current work. The evidence shows her tax issues first arose in tax year 2013. It also shows that she began working with federal and state tax authorities by 2014. While she may have tarried as the IRS protracted reviewing her materials, a position she admits was designed to keep the possibility of reduced penalties open, it was not the result of inaction or obfuscation on her part. Ultimately, when she discovered the IRS had referred her case for collection, she assured payments were ready for deposit. Meanwhile, she satisfied her state tax obligation and is finishing her payment on the minor balance remaining for related fees. Meanwhile, she kept her student loans in forbearance, as appropriate, until time for them to be subject to payment. She proved that she has been and is presently in timely repayment on her student loan debt. This is sufficient to raise AG ¶ 20(b) and AG ¶ 20(d).

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 her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 54-year-old program lead/project manager who has served in the same capacity for over three years. She has a bachelor's degree and two master's degrees related to her work specialty. Single and with no children, Applicant retired from the U.S. military in 2008. When her first civilian position ended in 2013, she endured a lengthy period of unemployment, followed by a multiple periods of employment and unemployment, until beginning her present position at the end of 2015.

The evidence shows that while Applicant may have tarried in addressing her federal and state tax issues, she did not delay in contacting them or working with them. Indeed, she admits she did not press the protracted efforts of the IRS in hopes that the delay would yield some reduction in the amount she owed. All this occurred before the SOR was issued. Once advised her federal tax bill had been referred for collection, she directly started making payments on that debt. Evidence of her first two months of payments to the IRS, plus evidence of her success addressing her state tax balance and student loans, were apparent by the time of her hearing.

Today, Applicant's tax year 2013 balance is paid, and she is making regular payments to satisfy her much-reduced balance owed to the IRS. Her state tax liability is also reduced to less than \$1,000 and in repayment. Her student loans are in timely repayment. With economizing, she now has a considerable monthly net remainder to assure her ability to meet her monthly obligations. While financial counseling would greatly benefit her given the fact she still uses credit cards, it is clear she has her finances under control. Consequently, I find Applicant has mitigated financial considerations security concerns.

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.f:	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. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge