



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



In the matter of:)
)
) ISCR Case No. 18-00144
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/17/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 18, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered (Answer) the SOR on June 1, 2018, and she requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 22, 2018, and the hearing was convened as scheduled on November 27, 2018. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list

was identified as hearing exhibit (HE) I. Applicant testified and offered one exhibit (AE A), which was admitted without objection. The record remained open until December 31, 2018, to allow Applicant to submit documentary evidence. She submitted AE B, which was admitted without objection. DOHA received the hearing transcript (Tr.) on December 6, 2018.

Findings of Fact

Applicant admitted four SOR allegations and denied the remaining three. Her admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 55-year-old employee of a defense contractor. She recently began working at her present job in approximately November 2018. She was laid off from her previous contractor job and was unemployed from May to October 2018. Before that, she worked for other federal contractors. She is married, but recently separated from her husband. She has four adult children. She has a high school diploma and has taken some college courses.¹

The SOR alleged Applicant failed to file her federal and state income tax returns for years 2012 and 2013, and that she had five delinquent collection debts totaling approximately \$11,430. Four of the debts are delinquent medical debts and the fifth is a deficiency from a vehicle repossession for a car loan she cosigned with her daughter. She admitted not filing her tax returns during her interview with a defense investigator in March 2017 and during her testimony. The debts were listed in credit reports from May 2016, August 2017, and May 2018 (SOR ¶¶ 1.a – 1.g).²

Applicant credibly explained that she failed to file her tax returns because she experienced a series of medical issues that debilitated her to the point that she thought she had filed those returns when she had not. She was also unemployed during some of this time. She explained that she had hip surgery in 2009; back surgery in 2010; foot surgery in 2013; and another back surgery, involving fusion, in 2014. She was heavily medicated after these surgeries, which caused her to lose focus on daily life matters. After she completed her security clearance application (SCA) in March 2016, she received correspondence from the IRS indicating that she failed to file her tax returns for 2012 and 2013. This is when she was first made aware that those returns were not filed. Applicant filed her 2012 and 2013 federal tax returns in April 2017. She contacted the state taxing authority to determine what years she needed to file. Because of a communication breakdown with the state tax authority, she did not file her 2012 and 2013 state tax returns until March 2018. She paid the required tax due for those years (totaling \$80) at the same time. She filed all of her federal and state tax returns before 2012 and has filed them all for tax years 2014 forward.³

¹ Tr. at 5, 19-21; GE 1.

² GE 3-6.

³ Tr. at 23, 25-27; Answer; GE 2-3.

The status of the delinquent debts listed in the SOR is as follows:

Repossession account-\$4,626. This is an automobile loan account Applicant cosigned with her daughter in 2011. Applicant's daughter stopped making payments on the debt, and Applicant continued to do so through approximately 2014. Her unemployment and medical issues caused her to stop making payments at that time. She has been in contact with the creditor attempting to work out a payment plan.⁴

Four Medical Accounts-\$2,788; \$1,822; \$2,144; \$50. Applicant documented that three of the medical debts were settled and are resolved. Concerning the remaining debt, Applicant provided post-hearing information that she entered into a payment plan to make \$100 monthly auto payments to the creditor. None of these accounts appear on her most recent credit report.⁵

Applicant testified that her current finances are in good order and that she typically has an \$800 monthly surplus after paying all her expenses. She is current on her car loan, her camper, and her student loans. Her May 2018 credit report corroborates these assertions.⁶

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. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

⁴ Tr. at 28-29; GE 6.

⁵ Tr. at 29-30; Answer; GE 6; AE A-B.

⁶ Tr. at 35; GE 6.

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 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 an 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.

Section 7 of EO 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

Failure 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;

- (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 failed to timely file her federal and state tax returns for 2012 and 2013, and she accrued several delinquent collection debts. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

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

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and 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.

Although Applicant should have responded in a more timely fashion, she has resolved her federal and state tax issues. She also addressed her delinquent debts. She missed filing her 2012 and 2013 tax returns when she experienced severe medical issues, which caused her to lose track of filing her returns. She also experienced periods of unemployment. These were conditions beyond her control. Given her health and employment status, she acted responsibly by filing her tax returns before the issuance of the SOR and by addressing her delinquent debts. There are clear indications that her financial issues are being resolved and that recurrence is unlikely. AG ¶¶ 20(a), 20(b) - 20(d) are applicable. Applicant filed her 2012 and 2013 federal and state income tax returns and has filed all her succeeding tax returns. AG ¶ 20(g) applies.

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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's federal contractor service, and the circumstances surrounding her indebtedness, specifically the medical issues she faced from 2009 through 2014 and her periods of unemployment. I am convinced she will act in a timely manner with her taxes from now on, and that she will not incur tax problems or delinquent debts in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the 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.g: 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.

Robert E. Coacher
Administrative Judge