



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



In the matter of:)
)
) ISCR Case No. 18-00903
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Tod D. Stephens, Esq.

04/25/2019

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 April 23, 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 May 16, 2018, and she requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2019, and the hearing was convened as scheduled on March 20, 2019. 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 exhibits (AE) A through M, which were admitted without objection. The record remained open to allow Applicant to submit additional documentary evidence. She submitted AE N through O, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 5, 2019.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. 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 32-year-old employee of a defense contractor. She began working at her present job in approximately March 2018. From January 2016 to March 2018, she was a shift supervisor for corporate security. She is single, never married, and has no children. She earned a bachelor's degree in 2009.¹

The SOR alleged Applicant filed a Chapter 7 bankruptcy petition in July 2015 and that the dischargeable debts were discharged in November 2015. The SOR also alleged four charged-off student loans totaling approximately \$135,516. The allegations are supported by court documents showing the 2015 bankruptcy and credit reports from November 2017, April 2018, and March 2019 showing the delinquent student loans. (SOR ¶¶ 1.a – 1.e).²

Applicant credibly explained that when she graduated from college in 2009 she had accumulated approximately \$80,000 worth of student loans paying for her education. For some period after her graduation she was unemployed and underemployed because of the poor economy. Her loans were deferred during this time, but they were incurring interest charges at rates between 15% and 19%. When she finally secured employment in her chosen field, her annual salary was approximately \$42,000 and her student loan amounts had risen to approximately \$160,000. She could not afford to make the \$2,000 monthly payments the credit holders were demanding. She sought to consolidate the loans, but the creditor refused. She was willing to pay her student loans, but she was unable to do so.³

Applicant kept in contact with her student loan creditor, but she also sought advice from an attorney. In 2015, she spoke with an attorney who advised her that she should file a Chapter 7 bankruptcy and include her student loans in the bankruptcy. Applicant reluctantly followed this advice and included her student loans in her bankruptcy. Her total liabilities listed in the petition were approximately \$181,000 and of that amount approximately \$161,000 were from her student loans. She had never been delinquent on her other debts listed in the bankruptcy before her attorney advised her to

¹ Tr. at 46-47, 19-21; GE 1; AE A.

² GE 3-6.

³ Tr. at 21-22; Answer.

stop paying them so they could be included in the bankruptcy. Her petition was granted and her debts were discharged except for her student loans which were non-dischargeable in bankruptcy. Applicant was given incorrect advice by her attorney.⁴

Applicant sought assistance from a second attorney who began negotiating with the student loan creditor in August 2017 about reaching a settlement. The creditor sued Applicant in state court, but those claims were all involuntarily dismissed by the judge in August, October, and December 2018. Despite these dismissals, Applicant had her attorney pursue settlement negotiations with the creditor. The settlement terms were reached in March 2019 and include Applicant paying a total of \$30,000 through four payments. Applicant documented that she completed her payments under the agreement. Applicant obtained these funds from her parents who recently won a \$1 million lottery. All her student loans are now resolved. Her March 2019 credit report shows no other delinquent debt.⁵

Based upon Applicant's recent personal financial statement, her financial affairs are in good order showing a monthly surplus of approximately \$1,468. She received financial counseling through her bankruptcy, and more recently, as advised by her second attorney. She also provided three character letters from two former coworkers and a personal friend. All attest to her honesty, integrity, and trustworthiness.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

⁴ Tr. at 23-25, 27; Answer; AE D-E.

⁵ Tr. at 27, 29-31, 34; Answer; AE E-I, N-P.

⁶ Tr. at 34; 37, 39; AE B-C, J-M.

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, 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; and
- (c) a history of not meeting financial obligations.

Applicant accumulated student loans that became delinquent. She also filed a Chapter 7 bankruptcy in 2015. I find both 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant funded her college education using student loans. Upon graduation, she was unemployed and underemployed. Her student loans accumulated large interest charges during this time. Applicant finally obtained employment in her career field, but by then her student loans had doubled in amount. She could not afford the payment plan her creditor demanded. She filed a Chapter 7 bankruptcy petition on the advice of counsel who told her that the student loans would be discharged. That was incorrect advice. She continued to communicate with her creditor, through her new attorney, and reached a settlement agreement in March 2019. Her initial unemployment and underemployment and the bad legal advice she received concerning the effect of a bankruptcy were conditions beyond her control and she acted responsibly by continuing to work out a settlement with her student loan creditor. She has received financial counseling and her current financial picture shows that she has control over her finances. She initiated a good-faith effort to settle her student loans and followed-up by making the negotiated payments. There are clear indications that her financial issues are being resolved and that recurrence is unlikely. AG ¶¶ 20(a) - 20(d) are applicable.

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. She has resolved her student loans and her current financial outlook is positive.

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.e:	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