



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



In the matter of:)	
)	
)	ISCR Case No. 18-01635
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Marcus Brown, Personal Representative

04/18/2019

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 June 25, 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 the SOR on July 10, 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 19, 2019. The Government offered exhibits (GE) 1 through 5, 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 March 29, 2019, to allow Applicant to submit documentary evidence. She submitted AE B through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 5, 2019.

Findings of Fact

Applicant admitted six 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 61-year-old employee of a defense contractor. She has worked for this contractor for approximately 14 years. She served honorably in the U.S. Army and retired in 1997 after 20 years in the grade of sergeant first class (E-7). She has held a security clearance for over 40 years. She has a high school diploma and has taken some college courses. She is currently married. She has been married four times previously. She has two adult children.¹

The SOR alleged Applicant had a foreclosed mortgage account; a past-due account in the amount of approximately \$31,890; five charged-off or collection accounts totaling approximately \$4,269; and two delinquent medical accounts totaling \$104. The debts were listed in a credit report from January 2017. Credit reports from August 2018 and March 2019 show no delinquent debts (SOR ¶¶ 1.a – 1.i).²

Applicant credibly explained that her financial problems occurred during the 2008 to 2011 timeframe when she was married to her fourth husband (H4). Applicant's job required frequent lengthy travel away from home. When she was away during her marriage to H4, he told her he was paying the mortgage payment for their home, which at some point became rental property. They initially used a realtor to lease and manage this property. H4 neglected to tell Applicant that he fired the realtor and began managing the rental property himself. He neglected to pay the mortgage payments on the property and failed to supervise the tenants who severely damaged the property. Eventually, the property went through foreclosure. Applicant was unaware the property was in jeopardy until the foreclosure proceedings. The property had a second mortgage, which also became delinquent while H4 was managing the property. Neither mortgage holder has sought a deficiency judgment against Applicant since the foreclosure in 2010. Applicant sought and was granted a divorce against H4 in 2011. There is no evidence showing that she had any financial difficulties before she married or after she divorced H4. Applicant recently purchased a home and is current on her monthly payments.³

¹ Tr. at 16-18, 21-22, 29; GE 1, 2.

² GE 3-5.

³ Tr. at 18, 20-21, 23-26; GE 4-5.

Applicant documented that she paid the SOR debts listed in ¶¶ 1.b, 1.c, 1.e, and 1.f in July 2018. Those debts are resolved. She also documented her dispute of SOR debts ¶¶ 1.g and 1.h by showing that she was covered by medical insurance and would not have incurred those debts. As for SOR debt ¶ 1.d, Applicant credibly stated that she contacted the creditor and they could not find that she owed on a debt. This is confirmed by the absence of any debt listing on the latest two credit reports. Those debts are resolved.⁴

In addition to her credit reports showing no delinquent debts and her recent home purchase, Applicant also has a retirement account valued at approximately \$100,000. This supports her testimony that she is in good financial standing.⁵

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.

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

⁴ Tr. at 18-19, 27-28; GE 4-5; AE A-B, D-E.

⁵ Tr. at 29.

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.

The evidence showed Applicant accrued several delinquent collection debts and a mortgage foreclosure. I find 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

(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.

Although Applicant should have responded in a more timely fashion, she has resolved her debts, outside of the mortgage foreclosure. The foreclosure was somewhat beyond her control because H4 had assumed responsibility for overseeing the property while she was working remotely. He failed in this responsibility and she suffered the consequences. However, these debts no longer appear on her credit report. She successfully disputed the two medical debts by showing her insurance entitlement. The remaining debt was not found by the creditor. There are clear indications that her financial issues are resolved and that recurrence is unlikely. AG ¶¶ 20(a) and 20(c) – 20(e) are applicable. AG ¶ 20(b) is partially 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 military service, her federal contractor service, and the circumstances surrounding her indebtedness. I am convinced that Applicant will not incur 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.i: 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