



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



In the matter of:)	
)	
)	ISCR Case No. 18-01816
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson Esq., Department Counsel
For Applicant: *Pro se*

March 25, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On October 23, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on November 6, 2018, and requested a hearing before an administrative judge. The case was assigned to me on January 8, 2019. DOHA issued a notice of hearing on January 23, 2019, and the hearing was convened as scheduled on February 7, 2019. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant offered six exhibits, referred to as Applicant's Exhibits A through F, which

were admitted without objection. Applicant called one witness and testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on March 4, 2019.

Findings of Fact

Applicant is 54 years old and divorced a second time. She has a high school diploma. She holds the position of Security Specialist 1 for a defense contractor. She seeks to obtain a security clearance in connection with her employment in the defense industry.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant failed to pay Federal income taxes for tax years 2010; 2014; 2015; and 2017. It also alleges that she is indebted to three creditors in the amounts of \$501; \$170; and \$125, respectively. In her Answer, Applicant admits allegation 1.a., and denies the remaining allegations. Credit reports of the Applicant dated May 9, 2015; January 27, 2016; and December 13, 2017, reflect that each of these debts were at one time owing and delinquent. (Government Exhibits 3, 4 and 5.)

Applicant has been married and divorced twice to the same man. (Applicant's Exhibit B.) Her first marriage was from 1985 to 2000. Her second marriage was from 2006 to 2011. Applicant has two children from the marriage who are now adults. For the most part, Applicant has raised her children and provided for them financially by herself.

Applicant began working in the defense industry in 2005 for a previous employer. Her employment was not stable or sufficient to live on. She began working for her current employer in 2017 and applied for a security clearance at that time. Since 2017, she has been working full time, and earning enough money to pay her bills, living within her means, and successfully controlling her finances.

Applicant testified that she has always filed her income tax returns on time. She was unable to pay her taxes on time beginning in 2010 because she was unemployed. She continued to be unemployed most of 2011. Her divorces also caused financial difficulties. In November 2011, she was hired by an employer but was laid off in 2014 due to corporate downsizing. Applicant even moved out of state to find a job and was hired in March 2015, but the job only lasted for 30 days. She was hired by another company in May 2015 where she worked until 2017.

In 2017, Applicant began working for her current employer and has been earning sufficient monies to live on and pay her past-due bills. In 2017, she contacted and hired a tax agency to assist her in resolving her back taxes owed. The agency helped Applicant enter into a settlement agreement with the Internal Revenue Service (IRS) to resolve her Federal back taxes owed in the amount of \$16,000. Since February 28,

2018, Applicant has been making regular monthly payments to the IRS in the amount of \$100. (Tr. p. 43 and Applicant's Exhibit A.) She recently asked the IRS to raise her monthly payment from \$100 monthly to \$171 monthly because she could afford it and because she wants to get the debt resolved as soon as possible. (Applicant's Exhibit A, and Tr. p. 51.)

1.b. During her interview with the DoD investigator, Applicant learned that she was also indebted to a bank for a delinquent credit card in the amount of approximately \$501. She promptly paid the debt off in November 2018, even before she received the SOR in this matter. (Applicant's Exhibit C, and Tr. p. 44.)

1.c. Applicant was indebted to a gas company in the amount of approximately \$170. Applicant stated that she first learned about this debt when she received her credit report from the Government. She contacted the creditor and they had no record of this debt. Applicant's account with this creditor is in good standing. (Applicant's Exhibit D.)

1.d. Applicant was also indebted for a medical bill in the amount of approximately \$125. She was not aware of the debt until the investigation in this matter. The debt has been resolved. (Applicant's Exhibit E.)

Applicant testified that her past has been a rough road, but things have greatly improved. She now has a better job, earning \$3,000 monthly, and her employment is stable. Her salary has significantly increased from the past employment she has had. She enjoys her job and she now has no delinquent debts. Applicant also has a retirement plan with her current employer. (Tr. p. 53.)

Applicant's brother-in-law, who has known the Applicant for the past forty years, and who has military and defense industry experience, and who has held a security clearance in the past, testified that Applicant is a very responsible individual. He has watched her through life struggles and finds her to be exceptionally trustworthy and reliable, no matter what she is confronted with. She lives within her means and pays her bills. She is recommended for a security clearance. (Tr. pp. 56-62.)

Letters of recommendation from Applicant's immediate supervisor and other friends and colleagues attest to her dependable nature, her punctuality, her hard work and dedication as well as her integrity. She has enriched the team with her abilities and work experience. She is honest and loyal and can always be counted on to do the right thing. She is recommended for a security clearance. (Applicant's Exhibit F.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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 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 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 the 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concern under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness 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 was unable to pay her all of her bills, including her taxes, and became delinquently indebted. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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.

Beginning in 2010, Applicant's financial situation began to decline. She was divorced and unemployed and trying to raise two children on her own. In this situation, she was unable to pay her taxes and a few bills. Since getting back to full-time employment in 2017, her finances have been vastly improved. She has hired a tax resolution agency who has helped her enter into a settlement agreement with the IRS that she following. She has also resolved her other delinquent debts, which were rather small in the first place. She has always filed all of the state and Federal income tax returns over the years, so that is not an issue. She has acted reasonably and responsibly under the circumstances. She is now earning enough money to live on and is paying her bills and living within her means. Applicant is now on the correct financial path. There are clear indications that the problem is resolved and under control, and there has been a good faith effort to resolve her debts. The Financial Considerations concern has been mitigated.

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

(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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the 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(a) were addressed under that guideline, but some warrant additional comment. Applicant has demonstrated responsibility and good judgment even in the face of many life struggles.

She is well respected on the job, and shows the level of maturity required in order to have access to classified information.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	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. National security eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge