



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



In the matter of:)	
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)	ISCR Case No. 18-02573
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne Driskill, Esquire, Department Counsel

For Applicant:
Catie E. Young, Esquire
Griffith, Young & Lass

December 2, 2019

Decision

ROSS, Wilford H., Administrative Judge:

Applicant has paid, resolved, or disputed all of her once past-due debts. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on August 15, 2017. (Government Exhibit 1.) On December 17, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on or after June 8, 2017.

Applicant answered the SOR in writing (Answer) on March 7, 2019, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 21, 2019. The case was assigned to another administrative judge on April 18, 2019. The case was reassigned to me on May 13, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 10, 2019. I convened the hearing as scheduled on July 31, 2019. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant offered Applicant Exhibits A through G, which were admitted without objection, and testified on her own behalf. I granted Applicant's request to leave the record open to permit her to submit additional evidence. DOHA received the transcript of the hearing (Tr.) on August 12, 2019. Applicant submitted Applicant Exhibit H on August 14, 2019. Department Counsel had no objection and the exhibit was admitted into evidence. The record then closed.

Findings of Fact

Applicant is 35 years old and employed by a defense contractor. She is married, but separated, and has three children. Applicant received a bachelor's degree in 2011. She is seeking to obtain a security clearance in connection with her employment. (Government Exhibit 1.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

In her answer to the SOR, Applicant admitted allegations 1.a through 1.g in the SOR with explanations. She denied allegation 1.h. She also submitted additional evidence to support her request for a finding of national security eligibility.

The SOR alleged, and Applicant admitted, that she owed approximately \$98,945 in past-due indebtedness to various creditors. Support for the existence and amount of the debts is supported by admissions of the Applicant, and credit reports submitted by the Government dated September 8, 2017; October 1, 2018; and July 28, 2019. (Government Exhibits 1, 3, 2, and 4.)

Applicant stated that her financial problems, as set out below, were due to several extenuating circumstances. She had issues related to unemployment and underemployment. In addition, there were acts of malfeasance by her husband, from whom she is now separated. Applicant also had medical issues related to the premature birth of her third child in 2016. (Answer; Tr. 31-32, 108.)

The current status of the debts is as follows:

1.a through 1.d. Applicant admitted that she owed four charged-off Federal student loans in the aggregate amount of \$84,869. Applicant began attempting to resolve these debts beginning in 2017. She consolidated them under a single payer in July 2017. However, in May 2018 she lost her job and was unable to continue agreed payments. After obtaining new employment Applicant again reached out to the creditor. A new payment plan was started beginning in October 2018 whereby Applicant would pay \$100 a month to rehabilitate the loan. Applicant provided documentary information showing that she has been making consistent payments under the new plan. Her intent is to settle this debt. This debt is being resolved under terms acceptable to the creditor. (Applicant Exhibits A and H; Tr. 31-41, 71-81.)

Applicant testified that she is current on her other student loans. Credit reports submitted by the Government support her statement. (Government Exhibits 2, 3, and 4; Tr. 35-37.)

The next two allegations will be discussed in chronological order. Applicant's husband, from whom she is now separated, submitted a statement concerning the facts surrounding these two debts, and taking responsibility for the actions that precipitated the bad debts. (Applicant Exhibit C.)

1.f. Applicant admitted owing a charged-off automobile loan in the amount of \$5,285. She purchased this car in about 2008 and made regular payments for several years. Applicant allowed her husband to use the vehicle starting in about 2009, as long as he made the monthly payments. He made the payments until approximately 2012, when the vehicle had to be repaired. The husband did not have the car repaired, and lied to Applicant about that fact. Eventually, Applicant discovered the subterfuge and, when she attempted to retrieve the vehicle, was told by the repair shop owner that the car had been sold for non-payment of past-due storage fees. Applicant has been unable to find out any additional information about the location of the car. She has filed a dispute with the finance company and the credit reporting agencies with regard to this debt. (Answer; Government Exhibit 4; Applicant Exhibit C; Tr. 45-49, 82-87.)

1.e. Applicant admitted owing a charged-off automobile loan in the amount of \$7,589. She purchased this car in about 2009. After the problems with the car described in allegation 1.f, Applicant allowed her husband to use this car, as long as he made the payments. This car also had mechanical problems due to the husband's actions, he subsequently stopped paying the loan, and eventually the loan went into default in

approximately 2014. Applicant no longer has possession of this car, either. Applicant reached a payment arrangement with this creditor in July 2019, and has made the first two payments in a timely fashion. This debt is being resolved. (Answer; Government Exhibit 4; Applicant Exhibits B and C; Tr. 43-45, 50-58, 87-89.)

1.g. Applicant admitted owing a past-due debt of \$778 for a credit card. Applicant reached a payment arrangement with the creditor and paid this debt in February 2019. This debt has been resolved. (Applicant Exhibit D; Tr. 58-60.)

1.h. Applicant denied that she owed a creditor \$424 for a past-due cable television debt. She contacted the cable television company, who told her that her account had a zero balance as of 2012. This debt only appeared on the oldest of the Government's three credit bureau reports. This debt is in dispute. (Answer; Government Exhibits 2, 3, and 4; Tr. 60-62, 89-91.)

Applicant's current financial situation is stable. She is able to pay her current monthly expenses with no trouble. A budget provided by Applicant, which includes payments for her student loans, shows that Applicant is solvent at the end of every month. As stated, the credit reports show that Applicant has additional student loans that are current. She no longer uses credit cards. Applicant understands the importance of resolving her past-due debts and is committed to remaining fiscally secure into the future. (Government Exhibits 2, 3, and 4; Applicant Exhibit E; Tr. 62-70.)

Mitigation

Applicant provided five letters of recommendation from people who knew her as work associates. The writers know of her financial situation. She is described as being honest, responsible, and a person with integrity. (Applicant Exhibit F; Tr. 22-31.) (See Applicant Exhibit G.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had approximately \$98,945 in past-due debts that she had not paid as of the time the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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.

Applicant has paid, legitimately disputed, or otherwise resolved the debts in the SOR. She admitted making poor decisions in trusting her husband to make loan payments for two cars she gave him, which eventually went into collections because of his misconduct. Since their separation, Applicant has worked hard to resolve one of the car loans, one of the other debts, and her delinquent student loans. She has a reasonable and documented basis to dispute the other two debts. The DOHA Appeal Board has said, "An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken

significant actions to implement that plan.” (ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006).) Applicant has done this.

Applicant’s current financial status is stable. She evinces a credible intent and the ability to maintain that stability into the future. She has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for national security eligibility 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(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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding her financial situation by her conduct to resolve her debts in the recent past. Overall, the record evidence does not create substantial doubt as to Applicant’s present suitability for national security eligibility, and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.h:

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge