



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



In the matter of:)
)
) ISCR Case No. 19-00342
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Pro se

January 28, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On July 12, 2019, 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 August 5, 2019, and requested a hearing before an administrative judge. The case was assigned to me on September 11, 2019. DOHA issued a notice of hearing on November 6, 2019, and the hearing was convened as scheduled on December 3, 2019. The Government offered seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant offered eleven exhibits, referred to as Applicant's Exhibits A through K, which were admitted without objection. Applicant also testified on her own behalf. The record

remained open until close of business on December 17, 2019, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted eight exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 8, which were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 11, 2019.

Findings of Fact

Applicant is 53 years old and divorced with three adult children. She has a bachelor's degree in information technology. She holds the position of journeyman for a defense contractor. She seeks to obtain a security clearance in connection with her employment in the defense industry.

The SOR alleges that Applicant has 17 delinquent accounts totaling approximately \$66,150. Her student loan debt totals approximately \$53,000 of the total. The remaining debt is miscellaneous consumer and medical debt. Applicant also failed to timely file her Federal income tax returns for tax years 2014, 2015, and 2016. She was indebted to the state for back taxes owed for tax years 2016 and 2017. In her Answer, Applicant admits each of the allegations and provides explanations. Credit reports of the Applicant dated November 3, 2014; June 21, 2017; August 2, 2018; and August 28, 2019, reflect that each of these debts was at one point owing. (Government Exhibits 4, 5, 6 and 7.)

Applicant served on active duty in the United States Navy for twenty years from 1984 until 2004, when she was honorably discharged. Her military record shows that she experienced financial difficulties then. She applied for and obtained a security clearance while in the military in 1989. In 1992, due to financial difficulties, her security clearance was suspended for about a 90-day period, and was then reinstated. (Tr. p. 41.) After she retired, she became a full-time college student, using her GI bill, and worked two jobs. She states that ever since she retired from the Navy, she has owed taxes. (Tr. p. 44.)

Applicant admits that she failed to file her Federal income tax returns on time. She has no good excuse for not filing her income tax returns on time other than poor time management, and anticipating that she would owe taxes that she did not have the money to pay. Applicant has at times lived beyond her means. Since her interview in 2018 concerning her security clearance, she has been diligent about paying her bills on time and living within her means. She now follows a budget and keeps a monthly budget book to keep close track of her bills. Each month she records all of her bills and where her money goes. After paying all of her monthly expenses, she has about \$500 left in discretionary funds. Applicant has worked for a defense contractor for about twelve years. A security clearance is necessary for her position.

Allegations 1.a. through 1.j., concern a number of student loans Applicant obtained in order to complete her college degree. Applicant provided a copy of a letter she received regarding her student loan consolidation application to lower her monthly

payments on her student loans. (Applicant's Exhibit B.) In June 2018, she entered a loan rehabilitation program and completed the program in February 2019. On October 2019, due to financial hardship, Applicant filed a general forbearance request that was approved. (Applicant's Exhibit E.) Since 2008, Applicant has made payments, off and on, toward her student loans, and has been in forbearance once before. Her latest agreement will allow her to pay \$104 monthly for ten years to pay off her student loan of \$53,000. (Tr. pp. 64-65.)

Allegation 1.k., is a debt owed to a department store that was charged off in the amount of \$573. Applicant has settled the debt. (Applicant's Exhibit A, and Tr. p. 67.)

Allegation 1.l., is a debt owed to a creditor on an account that was charged off in the approximate amount of \$175. Applicant settled this debt on August 9, 2019. (Tr. pp. 67-68 and Applicant's Exhibit D.)

Allegation 1.m., is a debt owed to a creditor for account that was placed for collection in the approximate amount of \$4,706. Applicant proposed a settlement offer of \$1,416.32 that was accepted to resolve the debt for less than originally owed. Payments were made in the amount of \$50 beginning December 13, 2019, and then every month thereafter until June 12, 2020, in the amount of \$227.72 monthly at which time the matter will be settled. (Applicant's Post-Hearing Exhibit 5.)

Allegation 1.n., is a debt owed to a creditor that was placed for collection in the approximate amount of \$870. Applicant settled this account for \$434.94 on August 7, 2019. (Applicant's Exhibit H.)

Allegation 1.o., is a medical bill that was placed for collection in the approximate amount of \$782. Applicant has settled this debt. (Applicant's Post-Hearing Exhibit 4.)

Allegation 1.p., is a debt owed to a creditor for an account placed for collection in the approximate amount of \$600. Applicant settled the debt for \$389.90 on September 11, 2009. (Applicant's Exhibit I.)

Allegation 1.q., is a medical bill that was placed for collection in the approximate amount of \$69. Applicant has settled this debt. (Applicant's Exhibit G.)

Allegation 1.r., concern Applicant's failure to file her Federal income tax returns for tax years 2014, 2015, and 2016, in a timely fashion. Applicant has now filed these returns, paid any Federal taxes owed, and has provided copies of these tax returns. (Applicant's Exhibit J.)

Allegations 1s. and 1.t., concern Applicant's delinquent back taxes owed to the state for tax year 2017 in the amount of \$520, and for tax year 2016 in the amount of \$528. Applicant has since paid all of her state back taxes in full. (Applicant's Exhibit K.)

Although Applicant is not normally provided a performance evaluation, she asked her supervisor for one and was provided it. Her performance evaluation dated

December 17, 2019, reflects that she “meets” and “exceeds” the goals and objectives of her job. She also excels at resolving issues and situations with little support from her supervisor. It is also recommended that she take some classes to improve her abilities and skillset on emerging technology. (Applicant’s Post-Hearing Exhibit 3.)

A letter from the Applicant’s mother, who resides with the Applicant, and who the Applicant takes care of, alludes to Applicant’s hard working nature, trustworthiness, reliability and good judgment. (Applicant’s Post-Hearing Exhibit 6.)

Applicant also provided a receipt for payment of a debt that was not alleged in the SOR to show good faith. (Applicant’s Exhibit C.)

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 concerns 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 took out student loans and lived beyond her means, which prevented her from being able to pay her bills. She now clearly understands that in order to remain employed in the defense industry she must live within her means and pay her bills on time. She must also file her tax returns on time and pay the required taxes owed each year. Because she was unable to pay her debts and 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, 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.

Applicant served honorably in the Navy for twenty years. Since retiring she went to college and obtained her Bachelor's degree. She is now working for a defense contractor and is still desiring to contribute to her country. Applicant's poor time management and spending beyond her means in the past caused her to acquire more debt than she could afford to pay. Since 2018, after her security clearance interview, she has seemed to gain a better understanding of the importance of paying her bills on time, filing her income tax returns in a timely fashion, and paying her taxes. She has paid off much of her delinquent debt. Although she is now in forbearance with regard to her student loans, she has the discretionary funds available to pay them when it is lifted. Her finances have been stabilizing, and she is making regular monthly payments toward her delinquent debts. She has completely paid off her Federal and state taxes. She has also filed all of the Federal and state income tax returns in question. She has acted reasonably and responsibly under the circumstances. She has significantly reduced her debt and continues to work toward doing so. Applicant is now on the correct financial path. There are clear indications that her financial problems of the past are being resolved and are under control. She has also demonstrated 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(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 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(d) were addressed under that guideline, but some warrant additional comment. Applicant is a honorably retired Navy Veteran who has worked for a defense contractor for the past twelve years. She supports her elderly mother who resides with her. Applicant is a hard worker and has made some poor decisions in the past regarding her finances. She now understands that she must be responsible with her financial affairs in every aspect of her life in order to hold and maintain a security clearance.

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

Subparagraphs 1.a. through 1.t.: 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge