



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



In the matter of:)
)
) ISCR Case No. 19-01661
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*
02/05/2020

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. National security eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on November 9, 2017. On June 10, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. Applicant answered the SOR on July 10, 2019, and requested a hearing before an administrative judge. The Government was ready to proceed on August 5, 2019, and the case was assigned to me on August 9, 2019. On August 22, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 26, 2019. I convened the hearing as scheduled.

At the hearing, Government’s Exhibits (GE) 1 through 4 were admitted without objection. Applicant testified, and Applicant’s Exhibits (AE) A through I were admitted, without objection. I received the transcript (TR) on October 17, 2019. I held the record open until November 27, 2019, to allow Applicant to submit additional documentation. She timely submitted AE J through AE Z, which are admitted without objection.

Findings of Fact

Applicant is 42 years old, single, and has one 13-year-old son. She was married from 2000 until she divorced 2007. Applicant received a bachelor's degree in 2004, and expects to receive a master's degree in cyber security in June 2020. She enlisted in the U.S. Army Reserve in 1999 and served on active duty in the Army from February 2005 until August 2006. Applicant then served in the Air Force Reserve from 2007 until 2008, and in the Air National Guard from 2010 to 2011. She received honorable discharges for all of her various periods of service. She has worked for a defense contractor as a knowledge management and information technology specialist since September 2017. Applicant has held a clearance off and on since approximately 1999, and she has held a top secret clearance for the past three years. (GE 1; GE 3; Tr. 10-15, 30-36)

The SOR alleges that Applicant has fourteen delinquent debts totaling almost \$71,000. Additionally, the SOR alleges that she failed to file her 2016 state and federal income tax returns in a timely manner, as required by law. Applicant's financial issues started in approximately 2006 after she left active duty. She was not intentionally negligent toward her financial responsibilities; however, various life circumstances contributed to her inability to pay her obligations.

Applicant has worked for federal contracting companies on and off since 2007; however, she has experienced various periods of unemployment and underemployment. When her son was born in 2006, Applicant was unemployed. She relied on his father for financial support during that 9-month period of unemployment as well as other periods of unemployment. Since leaving the abusive relationship with the child's father in 2015, she has received child support on an inconsistent basis. She has also incurred significant legal fees contesting her son's father's petitions for reductions of his child support obligations. Over the years, Applicant has also provided financial help to her mother during significant financial events. Applicant served as her mother's caregiver as she battled cancer in 2012 and during another health crisis in 2014. Applicant has also experienced her own health issues that have negatively impacted her finances. (GE 1; GE 2; GE 3; AE A; AE E; AE J; AE R; AE S; AE T; AE U; AE W; Tr. 36-37, 48-51, 69, 72)

The majority of Applicant's debt consist of 11 student loans, which currently total approximately \$50,000. The loans were opened between 1999 and 2014. She fell behind on the older student loan accounts in approximately August 2006, after she left active duty. At that time, she was unemployed and pregnant. She made periodic payments, but also deferred the loans and put them in forbearance status. Once the forbearance and deferments expired, Applicant struggled to make regular payments. (GE 1; GE 2; GE 3 at 7-8; AE A; AE B; AE J; AE K; AE L; Tr. 41-44, 47)

Applicant provided documentation demonstrating that she has been rehabilitating her loans which are currently being administered by a third-party company. She has been making \$24 monthly payments, as required, since July 2019. In March 2020, the accounts will be reevaluated, and then she will make payments to the Department of Education. Her 2015 and 2016 federal tax return refunds were seized and applied to her student loan debt. Since April 2016, payments totaling over \$14,282 have been made toward this debt.

Applicant is using her GI Bill benefits to pay for her master's program and is not incurring new student loan debt. (AE A; AE B; AE J; Tr. 44-50)

In 2016, Applicant purchased a used vehicle for \$10,499 with a 24% interest rate. Within months it suffered several mechanical issues, and she could not afford both the car payments and repair costs. Additionally, from June to September 2017, she was on short-term disability due to her thyroid surgery. In July 2018, Applicant's vehicle was repossessed, and the \$13,315 balance was placed for collection. Applicant started contacting the lender in June 2019, and settled and resolved this debt in October 2019 with a payment of \$5,100. (GE 4 at 5; AE A; AE D; AE J at 5; AE M; Tr. 24-25, 52-54)

During the summer of 2019, Applicant agreed to settle the alleged \$440 utility bill. She made payments in July, August and September 2019 totaling over \$110. She made an additional payment of \$25 in November 2019. This debt will be resolved in February 2020. (GE 2; GE 3 at 9; AE A; AE E; AE G at 8; AE J at 6; AE Z; Tr. 55-58)

Applicant denied the alleged \$100 medical debt because she did not recognize the debt. After the issuance of the SOR, she contacted the creditor and learned it is legitimate, and it was incurred in 2013. She contacted the creditor prior to the hearing and was told that due to the age of the debt the creditor had closed out the debt. She then disputed the debt with the three credit reporting companies. (GE 2; GE 3 at 9; GE 4; AE A; AE F; AE G; AE Q; Tr. 25-26, 58-61)

Applicant used a professional tax preparer for tax years 2015 through 2018. In 2017, Applicant believed that the tax preparer that she had used for previous tax years had submitted her 2016 state and federal income taxes in a timely manner. The tax preparer, who was elderly, did not mail Applicant's 2016 taxes. In August 2019, Applicant and her preparer filed her state and federal income tax returns for tax years 2016 through 2018. She had previously filed for extensions for tax years 2017 and 2018. Applicant received a refund for her 2016 state and federal income taxes, and her federal return was applied to her student loans. She has a \$2,536 obligation with the IRS for tax year 2017. In August 2019, she submitted an installment agreement request for tax year 2017. Applicant has an installment agreement to pay her state income taxes. (AE A; AE C; AE J at 7-8; AE N; AE O; Tr. 23, 38-41, 47-48, 61)

Applicant received credit counseling from 2004 until 2006, while she was in the Army Reserve, and in 2016 through her church. She follows a written budget, is able to live within her means, and has no new delinquent debts. Applicant identified that she did not learn how to handle finances from her family, and she has been working to correct this issue by attending counseling and following a written budget. Additionally, she has been attempting to secure a second job to help pay down her debt. (AE G; AE J, at 7; AE P; Tr. 65-70)

Applicant received an Army Good Conduct Medal; National Defense Service Medal; Global War on Terrorism Service Medal; Army Service Ribbon; and a marksmanship badge. Applicant also provided eleven letters of recommendation from friends, family members, and work associates. She is described as a person of

“incomparable moral and ethical character” who is determined and hard working. Applicant’s supervisor of two years wrote that she has “had no cause for concern regarding her performance. [Applicant] is dependable, thoughtful, and well regarded...” and she recommended that Applicant receive her clearance. Applicant’s most recent performance appraisal recognized that she is responsible, reliable, and trustworthy. (AE H; AE I; AE Y; Tr. 27-28, 71)

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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 the national security.”

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 safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation of 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 concern under Guideline F (Financial considerations) is set out in AG ¶ 18:

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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's admissions and the documentary evidence establish three disqualifying conditions under AG ¶ 19:

- (a) inability 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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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;

(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; 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 experienced personal financial issues related to various periods of unemployment, underemployment, family-related issues, and medical issues. She started working with credit counselors before the issuance of the SOR to address her delinquent debts, and she has worked to address her financial obligations. Her efforts demonstrate a good-faith effort to resolve her debts, and the record evidence demonstrates that the debts are either resolved or under control.

Applicant has filed state and federal income tax returns for 2016. She has no outstanding debt for this tax year. She was forthright and honest at the hearing when questioned regarding her 2017 and 2018 state and federal income tax returns. She has an outstanding obligation for her 2017 federal return and her state income taxes, but she is working to resolve these debts through installment agreements.

The Directive does not require that applicants be debt free or have perfect finances. Applicant could have worked harder to resolve her debts in a timelier manner; however, she has admitted that she lacked experience, knowledge, and understanding regarding the importance of finances. She did not intend to be financially irresponsible, and she intends to continue to make payments toward her student loans and outstanding state and federal taxes. Applicant's various personal and professional letters of recommendation demonstrate that she is a dependable, hardworking, and responsible person.

Applicant follows a written budget and pays her current financial obligations. She is willing and able to live within her means, which is reflected in the testimonial and documentary evidence. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) are established.

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. I also considered Applicant's favorable character evidence. Based upon the record evidence, I have no doubts that Applicant is not a security risk.

I conclude Applicant met her burden of proof and persuasion. She mitigated the financial considerations security concerns and established her eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a to 1.p:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge