



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



In the matter of:)	
)	
)	ISCR Case No. 21-01245
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: Stephen A. Roepke, Esq.

04/04/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns arising from her financial issues alleged under Guideline F (Financial Considerations). National security eligibility for access to classified information is granted.

Statement of the Case

On December 2, 2020, Applicant completed and signed her security clearance application (SCA). On September 10, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant submitted a response to the SOR with documentation on September 28, 2021. She admitted two of the five SOR allegations (SOR ¶¶ 1.a, and 1.d). She denied the remaining three allegations, and she hired counsel to investigate the current status of

the debts. (SOR ¶¶ 1.b, 1.c, and 1.e.) She requested a hearing before an administrative judge. On February 22, 2022, the case was assigned to me. On April 4, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 19, 2022. The hearing proceeded as scheduled using the DOD Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-4. Applicant testified, and her counsel offered 21 documents labeled Applicant Exhibits (AE) A through U. I admitted all proffered exhibits into evidence without objection. I held the record open for two weeks after the hearing in the event either party wanted to supplement the record with additional documentation. Applicant timely submitted two additional documents, AE V and AE W, which I admitted into evidence without objection. On April 26, 2022, DOHA received a copy of the transcript (Tr.).

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is a 56-year-old employee of a DOD contractor who has worked for this employer since December 2020. Her job title is procurement manager. She married her husband in 1985 and they have two adult children. This is her first application for a DOD security clearance. (Tr. 24-29, 55; GE 1)

Financial Considerations

SOR ¶ 1.a alleges that Applicant filed for Chapter 13 bankruptcy in 2009. She stated that she and her spouse experienced financial difficulties after her family's business closed in 2005 due to a recession in the economy. In addition, her husband lost his job in 2005 and started his own business that same year, which did not create sufficient revenue for the next three years. All of these factors prompted them to file for bankruptcy protection. They participated in the mandatory financial counseling course. She and her spouse made systematic payments to the trustee for five years, and their case was discharged in May 2013. (Tr. 23, 25-29; GE 1; AE B)

Applicant stated that the debt alleged in SOR ¶ 1.b was a duplicate of the delinquent debt alleged in ¶ 1.d. During the hearing, Department Counsel stipulated that these accounts were duplicates. This delinquent account had been referred to LVNV for collection in the approximate amount of \$28,857. In about 2020, Applicant hired a credit counseling law service to resolve this debt, but after a lengthy period of inaction, she contacted another attorney. This attorney, who also represented her during her security clearance hearing, had her open an escrow account of \$32,000 so he could negotiate a settlement with the creditor. He provided all of the settlement negotiation emails and stated that he anticipated this account would be fully settled within the next 60 days. Ten days following the hearing, Applicant provided documentation of a full settlement of this account in the amount of \$14,000. This account is resolved. (Tr. 29-30, 33; AE C-AE E, AE G-AE L, AE Q, AE R, AE V)

SOR ¶ 1.c alleges that Applicant is indebted to an apartment complex in the approximate amount of \$11,486, for a revoked leasing contract. In 2018, Applicant's daughter moved to another city and needed her mother to co-sign the apartment's two-year lease agreement. Applicant co-signed the lease agreement, but her daughter eventually needed to move out of the apartment before completion of the two-year period. Her daughter tried to work with the leasing manager, but her attempts to resolve this situation were unsuccessful. Applicant also tried for over a year to work with the leasing manager, who would not return her phone calls or emails. She turned this account over to her attorney, who successfully negotiated a settlement on this account for \$3,485.04. Receipt of the settlement was provided, and this debt is fully resolved. (Tr. 31-32; AE M, AE N, AE O)

SOR ¶ 1.e alleges that Applicant is indebted to a lender in the approximate amount of \$21,611. Applicant stated that she had no knowledge of this creditor, and when her attorney investigated the account, they discovered that her daughter had taken out a loan and forged her signature as a co-signor without her knowledge or consent. Applicant's counsel stated that the creditor is apparently aware of the forgery, because they filed a lawsuit against the daughter only, and Applicant was not listed as a co-defendant in the complaint. Documentation of the complaint was submitted. Although Applicant did not co-sign the loan for her daughter and is not legally responsible for this debt, it was her intention to assist her daughter in the resolution of the account with anticipated escrow money available after settlement of the debt alleged in SOR ¶ 1.b. (Tr. 33-34)

Applicant's husband and their son are co-owners of a business. When the business first opened, it was not producing much profit, but they made enough money to pay the company's monthly expenses. Over time, the business grew and became established in the community. Last year the company had over one million in sales. Applicant submitted her monthly budget into the record. The personal monthly budget showed monthly income of \$13,500.00 and monthly expenses of \$8,081.06. Applicant and her husband are financially secure and have not developed any new debts. They have timely filed all income tax returns and do not owe any delinquent tax debt. (26-27, 34; AE W)

Character Reference

Applicant submitted a character reference letter from her current boss, the director of global procurement. He lauded Applicant's high moral standards and her outstanding work ethic for the mission she supports. He has worked with her since 2006, and places a great deal of trust in her abilities. He readily endorsed Applicant for DOD security clearance eligibility.

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(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 access to classified information 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. Likewise, I have not drawn inferences grounded 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, 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 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 Executive Order 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).

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” The SOR alleges delinquent debts totaling approximately \$62,000, and a previous Chapter 13 bankruptcy filing in 2009. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating 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, 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.

Applicant experienced financial difficulties after her family-owned business closed in 2005, followed by her husband's loss of employment that same year. Although he did start up his own company, the business did not provide adequate revenue for the first few years of operation. These are circumstances that were beyond her control. In 2009, she and her spouse filed for Chapter 13 bankruptcy and made regular payments to the trustee for five years. Their case was fully discharged by the bankruptcy court in 2013.

More recently, Applicant acted responsibly in dealing with her creditors by contacting a law firm specializing in the settlement of delinquent consumer debt. Unfortunately, the law firm delayed taking action, and she turned to another attorney for legal assistance. This attorney, who was also her counsel during the security clearance hearing, initiated an investigation into each delinquent account. He discovered that there were duplicate accounts, and also learned that Applicant's adult daughter had forged Applicant's signature as a co-signor for a loan taken out without her mother's knowledge or consent. Two of the four debts alleged in the SOR were invalid debts attributed to Applicant.

Of the two remaining debts alleged in the SOR, Applicant provided documentation that both accounts are resolved. Currently Applicant and her spouse earn sufficient income to pay all of their monthly expenses. They have not developed any new delinquent debt. She participated in financial counseling and is current on filing and paying her Federal and state income taxes. She provided sufficient documentation to show her responsible efforts in resolving her debts. Under the current circumstances, there are clear indications that her financial problems are fully resolved, and her finances are under control. Financial considerations security concerns are 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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance

decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his [her] off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant's financial problems were caused by circumstances beyond her control, and she took responsible action in addressing them. Her supervisor praised her strong work ethic and he finds her to be trustworthy. She is committed to keeping her financial affairs in order, and I find that future financial problems are unlikely to recur. After evaluating all the evidence in the context of the whole person, 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-1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge