



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



In the matter of:)
)
) ISCR Case No. 20-01068
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*
09/08/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant mitigated the financial and personal conduct concerns. Eligibility for access to classified information is granted.

History of Case

Applicant submitted a security clearance application (SCA) on February 21, 2020. On March 12, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F (financial considerations) and E (personal conduct). Applicant answered the SOR on September 2, 2021, and requested a hearing before an administrative judge (Answer). The case was assigned to me on January 27, 2022. On March 8, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 28, 2022. The hearing was held as scheduled, via video teleconference on the Microsoft Teams platform.

At the hearing, Government Exhibits (GE) 1 through 7 and Applicant Exhibit (AE) A were admitted without objection, and Applicant testified. I marked the March 3, 2022 case management order as Hearing Exhibit (HE) I; Department Counsel’s December 13, 2021 discovery letter as HE II; and Department Counsel’s exhibit list as HE III. I received

the transcript (Tr.) on April 4, 2022. The record was held open until April 18, 2022. Applicant timely submitted AE B through F, which were admitted without objection, and the record closed.

Findings of Fact

Applicant is 58 years old. She has been married to her husband since 1995, and they have three daughters who are young adults. She received a high school diploma in 1982. She currently works as an administrative specialist, and she has worked for her current employer, a DOD contractor since 2011. She has held a secret security since 1982, and has worked for DOD contractors her entire career. (Tr.10-11, 16-19; GE 1)

In Applicant's Answer to the SOR, she denied the \$22,703 mortgage debt alleged in SOR ¶ 1.a. She admitted both her 2008 and 2016 Chapter 7 bankruptcies. Additionally, she admitted that she failed to disclose her 2016 Chapter 7 bankruptcy to her facility security officer (FSO), as required.

The debt alleged in SOR ¶ 1.a was a home equity loan opened in March 2007, for Applicant's current primary residence. At the hearing, she testified that this debt was included in her 2008 Chapter 7 bankruptcy; however, the bankruptcy documentation indicates the debt was reaffirmed at that time. In her post-hearing documentation, Applicant provided documentation from the creditor demonstrating that this debt was paid in full in April 2018. At that time, the mortgage was released, and the release was recorded with the county. (Tr. 26-31, 40-43; GE 2 at 37; GE 3 at 23; GE 4 at 9; AE A; AE E)

Applicant's financial issues started in late 2007. Her husband has been an over the road (OTR) truck driver for most of his adult life. In 2007, they purchased a semi-truck for him to become an owner/operator. Soon after they purchased the tractor trailer, the vehicle required repairs. Additionally, the fuel for the vehicle was very expensive, which left very little money in their budget for food, gas, or other unexpected bills. During this period, Applicant's company lost the contract she was working on as well. Therefore, they decided to file for Chapter 7 bankruptcy protection. Their total unsecured liabilities were just under \$83,000. Their debts were discharged in 2010, and she disclosed this bankruptcy to her FSO, as required. (Tr. 19-22, 25, 39; GE 2; GE 7; AE A; AE B)

In 2016, Applicant's husband told her he wanted a divorce. She went to see a divorce attorney, and after reviewing her debts and her income, he told her she could not afford to remain in her marital home with her three children. At that time, her daughters were between the ages of 14 and 19. Applicant's husband's attorney recommended that they discharge their debts through bankruptcy before filing for divorce. They followed her husband's attorney's advice and filed for Chapter 7 bankruptcy in August, 2016. Their unsecured liabilities totaled just over \$45,000, and their debts were discharged in

December, 2016. Applicant and her husband chose to work on their marriage and ultimately did not get divorced. (Tr. 22-25; GE 3; GE 7; AE A; AE B)

In 2016, Applicant disclosed her financial issues and bankruptcy to her supervisor, because she needed to take time off of work for various appointments. However, she did not report the bankruptcy to her FSO due to “personal humiliation, embarrassment, [related to her] husband...asking for a divorce.” At that time, she was more comfortable disclosing her personal information to her supervisor than to her FSO. Additionally, she was embarrassed that she was filing for bankruptcy a second time. (Tr. 31-32, 38-39; GE 7; AE A)

I've worked with these people, or those people at the time, for many years. I was just humiliated. I still wasn't sure if we were going to stay married. It was just bad judgment on my part, that's all I can say. (Tr. 32)

Applicant's supervisor recommended that she hold off on reporting the 2016 bankruptcy to their FSO until she was certain that she was going to file. “And then things got away from [Applicant] until the investigator came to interview [her]” in December 2019. She disclosed the 2016 bankruptcy to the investigator at that time, and it appears that she did so before being confronted. She recognizes she made a serious mistake in not reporting the 2016 bankruptcy to her FSO, and she will not make a similar lapse in judgment. This is the lone mistake she has made in her 30-year career working as a DOD contractor. (Tr. 33, 46; GE 7; AE A; AE B)

Applicant does not have any current delinquent debt. She and her husband each earn approximately \$62,000 annually. They follow a written budget and have a net monthly remainder of over \$3,200. They are able to live within their means and pay their bills. They have filed their state and federal tax returns in a timely manner the past five years and do not owe any state or federal tax debt. She has attended credit counseling in conjunction with both of her bankruptcy filings. (Tr. 25-26; 34-37; GE 2; GE 3; GE 6; AE B; AE F)

Applicant testified and provided a letter regarding the importance of her lengthy career working for DOD contractors. According to her last two employee performance evaluations, she is considered a valued employee who is reliable and consistently exceeds expectations. “She is quick to bring any security concerns or issues to our attention, which greatly reduces the opportunity for a security incident.” (Tr. 33, 46; AE B-D).

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 AG ¶ 2, describing 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."

According to 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 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 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 Concerns

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 two disqualifying conditions under AG ¶ 19:

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

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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant experienced personal financial issues related in large part to her husband's past employment issues and their attorneys' recommendations pursuant to the divorce he initiated in 2016. Although she filed for Chapter 7 bankruptcy protection twice within ten years, it was due to circumstances that were not within her control. In the intervening six years, she has worked to address her financial issues. Her efforts demonstrate a good-faith effort to resolve her debts, and the record evidence demonstrates that the debt alleged in the SOR is resolved.

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 was established under AG ¶¶ 20(a), 20(b), 20(c), and 20(d).

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes the following condition that could raise a security concern and be disqualifying in this case:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator,

security official, relevant to a national security eligibility determination, or other official government representative;

Applicant failed to disclose her 2016 Chapter 7 bankruptcy filing and discharge to her FSO. She disclosed it to her supervisor, but was ashamed and embarrassed to disclose that her husband wanted a divorce, which was the cause of the bankruptcy. She was also embarrassed that she was filing for bankruptcy for a second time.

AG ¶ 17 provides conditions that could mitigate security concerns raised under this guideline. Four of those conditions are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant disclosed her 2008 Chapter 7 bankruptcy to her FSO, as required. She disclosed her 2016 bankruptcy and financial issues to her supervisor. In 2019, when she was interviewed by a Government investigator, she disclosed her financial issues, including her 2016 bankruptcy, before being confronted.

Applicant credibly testified that she was remorseful for her lapse in judgment in failing to disclose her 2016 bankruptcy to her FSO. Additionally, her statements that this behavior will not be repeated, and it was an anomaly in a 30-year career were also sincere.

The performance evaluations submitted by Applicant demonstrate that she is a valued and responsible employee. Despite the significance of her mistake, Applicant's subsequent behavior is indicative of an individual who has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. Additionally, her behavior is not ongoing in nature, frequent, nor does it continue to cast doubt on her reliability, trustworthiness, and good judgment. The referenced mitigating conditions apply and the security concerns about her personal conduct are mitigated.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guidelines at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns at issue. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security of the United States to grant her eligibility for access to classified information.

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 – 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge