



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



In the matter of:)
)
) ISCR Case No. 12-06235
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

08/13/2015

Decision

CURRY, Marc E., Administrative Judge:

Since 2011, Appellant has reduced her 2008 federal and state income tax arrearage by approximately \$27,000 through a combination of monthly payments, and the application of overpayments from successive tax years to the delinquent amount. She satisfied her two outstanding medical bills and is current on her credit card. Given the efforts she has made thus far, I am confident that she will continue satisfying her tax arrearage consistent with her payment plans. Applicant has mitigated the security concern. Clearance is granted.

Statement of the Case

On December 11, 2014, 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On December 31, 2014, Applicant answered the SOR, denying the allegations set forth in subparagraphs 1.a and 1.b, and admitting the allegations set forth in subparagraphs 1.c through 1.e. She requested a hearing; whereupon the case was assigned to me on March 27, 2015. DOHA issued a notice of hearing on April 14, 2015, scheduling the hearing for May 15, 2015. The hearing was held as scheduled. At the hearing, I received three Government exhibits (GEs 1-3), and considered Applicant's testimony. At the close of the hearing, I left the record open, at Applicant's request, to allow her to submit exhibits. Within the time allotted, she submitted five exhibits that I marked and incorporated into the record as Applicant's Exhibits (AE's) A through E. DOHA received the transcript (Tr.) on May 26, 2015.

Findings of Fact

Applicant is a 54-year-old single woman. She graduated from college in 1982, double majoring in graphic design and photography, and she earned a master's degree in the public design in 1994. (Tr. 14) Since 2011, she has worked for a defense contractor as a creative services manager. Her duties include overseeing a team of graphic designers who design marketing products, training products, and event planning brochures. (Tr. 15)

In January 2008, Applicant accepted a one-year term contract with a government contractor. (GE 1 at 17) As a contract employee, the company that retained her services did not deduct income taxes from her pay. Applicant failed to set aside money in an escrow account to pay her income taxes. She discovered this oversight later during her term employment, but did not address the issue, anticipating that the tax bill, when due, would be high, but manageable.

Applicant's assumption proved to be mistaken, as she owed approximately \$30,000 in federal income taxes and \$6,000 in state income taxes, as alleged in subparagraphs 1.d and 1.e. By the time Applicant received these bills, her term employment had expired, and she was unable to obtain full-time employment for the next two years, until gaining her current job in 2011. Consequently, she was unable to develop a payment plan to satisfy these debts, or make anything other than nominal payments toward their satisfaction. (Tr. 10)

Shortly after Applicant obtained her current job, she entered into a payment plan with the U.S. Internal Revenue Service (IRS). Under the plan, Applicant pays \$416 per month through automatic debits. Also, the IRS applied refunds for successive years, totalling approximately \$2,300, to the delinquent balance. (AEs A, B) As of May 2015, Applicant had reduced the balance to approximately \$8,500. (AE A)

Applicant entered a payment plan to satisfy her state income tax delinquency in September 2010. Under the plan, she pays \$50 monthly. (AE E at 2) Like the federal

plan, the state taxing authority has applied overpayments for successive tax years to the delinquency. The current balance is \$317. (AE E at 2)

The remaining three SOR debts total less than \$300. Subparagraph 1.a is a credit card that was past due in the amount of \$98 as of the date of the SOR. Applicant paid this debt. As of April 2015, this credit card account was current, and the revolving balance was less than \$2,000. (AE D)

Subparagraphs 1.b and 1.c are medical bills allegedly delinquent in the amount of approximately \$200. Applicant disputes these bills, contending that she contacted the hospital where she received the medical services and was told that she owed no money. (Answer at 2; Tr. 20)

Applicant owns her home and earns \$95,000 annually. She maintains a budget and has approximately \$500 of monthly discretionary income. (GE 3 at 6; Tr. 28)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant incurred approximately \$36,000 of delinquent federal and state

income taxes from her 2008 federal and state income taxes that was still largely outstanding as of 2010. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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, while working as a contract employee in 2008, did not set aside money in a tax escrow account, and later miscalculated how much she was going to owe. Although her later problem with finding full-time work after her term employment expired was unanticipated, and prolonged her inability to make significant progress toward reducing the delinquencies, she was well aware of her responsibility to set aside money for income taxes while on the contract job. Consequently, her extended underemployment does not trigger the application of AG ¶ 20(b).

Nevertheless, once Applicant obtained a full-time job in 2011, she arranged payment plans and began steadily satisfying the delinquencies. Since then, she has reduced the federal delinquency by approximately \$22,000 and has nearly satisfied the state income tax delinquency. The steady payments of the income tax debts together with the satisfaction of the \$98 credit card delinquency trigger the application of AG ¶¶ 20(c) and 20(d).

Applicant did not provide evidence supporting her contention that she does not owe the hospital bills listed in subparagraphs 1.b and 1.c; however, I am satisfied that she has paid them, absent supporting documentary evidence, in light of the documentary support that she provided supporting her steady payments of the much larger and more significant bills listed in subparagraphs 1.d and 1.e. Under these circumstances. AG ¶ 20(e) does not apply, but its inapplicability has no negative ramifications vis a vis the security clearance evaluation.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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 conclude that the presence of rehabilitation is significant, as Applicant has been steadily satisfying her delinquent debts. Her ample discretionary income, together with the length of time she has been making the payments leads me to conclude that she is likely to continue doing so in the future. In sum, Applicant's case presents no potential for pressure, coercion, exploitation, or duress.

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-1.e:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge