



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



In the matter of:)
)
) ISCR Case No. 12-07449
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On May 21, 2015, the Department of Defense (DOD) 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 3, 2015, and requested a hearing before an administrative judge. The case was assigned to me on July 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 15, 2015, scheduling the hearing for August 17, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 25, 2015.

Findings of Fact

Applicant is a 62-year-old employee of a defense contractor. She served in the U.S. military from 1980 until she retired in 2000. She has worked for her current employer or a predecessor defense contractor since her retirement from the military. She seeks to retain her security clearance, which she has held since she was in the military. She attended college for a period, but she did not earn a degree. Her husband passed away in 2010. She has one adult child.¹

Applicant's late husband also retired from the military. He handled the family's finances. He developed cancer in 2006, and required surgery and multiple medical procedures. He was no longer able to work. The family's income was greatly reduced, which caused a financial strain. Applicant felt bankruptcy was her most viable option. She filed a Chapter 7 bankruptcy case in 2012, and her debts were discharged the same year. She had some additional financial problems after the bankruptcy.²

The SOR alleges four delinquent debts totaling \$2,490, a \$7,033 federal tax lien, and the 2012 Chapter 7 bankruptcy. Applicant admitted that she owed the debts at one point, but she stated that the taxes were paid and she is paying the other four debts.

The \$7,033 federal tax lien was filed in 2008. It was for tax years 2003, 2004, and 2005, when Applicant's late husband was in charge of handling the finances and filing the joint tax returns. The delinquent taxes were paid through payments and the IRS withholding refunds. It is unclear when the 2003 taxes were paid, but the 2004 taxes were paid by 2011. The 2005 taxes were paid and resolved by 2012, but the lien was not formally released until June 2015. Applicant received a refund after filing her 2014 tax return.³

Applicant is making regular payments on the remaining four debts. She credibly stated that she intends to maintain the payments. Her finances are not perfect, but she is able to pay her bills while living a frugal lifestyle. She received financial counseling in conjunction with her bankruptcy.⁴

¹ Tr. at 20, 27-28, 32-33; GE 1, 2.

² Tr. at 20, 23-24, 31-32; GE 1-4; AE B.

³ Tr. at 21, 24-25; Applicant's response to SOR; GE 3, 4; AE C.

⁴ Tr. at 21-22, 26-30, 33-34; Applicant's response to SOR; GE 3, 4; AE A.

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 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 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 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 security concern for financial considerations is set out in AG ¶ 18:

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. The following are potentially applicable in this case:

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

Applicant had delinquent debts that she was unable to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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), 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was unable to recover financially from her husband's illness and death. She filed a Chapter 7 bankruptcy case in 2012, and her debts were discharged the same year. She developed additional problems, but her taxes were paid in 2012, three

years before the SOR was issued. She is making regular payments on the four remaining debts. Her finances are not perfect, but she is able to pay her bills while living a frugal lifestyle.

I find that Applicant's financial problems were caused by conditions that were beyond her control. They occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. The above mitigating conditions are applicable.

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(a):

(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 considered Applicant's honorable military service, her stable work history, the factors that led to her financial problems, and the steps she has taken to remedy those problems. I am convinced her finances are sufficiently stable to warrant a security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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-1.g: ⁵	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

⁵ There is no SOR ¶ 1.e.