



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



In the matter of:)	
)	
)	ISCR Case No. 12-09109
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

02/17/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On April 30, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 28, 2015. A notice of hearing was issued on November 5, 2015, scheduling the hearing for December 3, 2015. Government Exhibits (GX) 1-8 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-K at the hearing. The transcript was received on December 11, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted and denied in part SOR allegation 1.a under Guideline F. She denied the SOR allegation 1.b and provided explanations.

Applicant is 33 years old. She graduated from high school and attended college from 2000 to 2005, obtaining an undergraduate degree. She also obtained certificates in security training. (AX and I) Applicant is single and has one child. She has been with her current employer since 2013, where she serves as a service desk analyst.¹ She completed a security clearance application in 2012. (GX 1) Applicant has held a security clearance, but it is not clear for what period of time.

The SOR alleges that in May 2002, Applicant filed a Chapter 7 bankruptcy and that the debts were discharged in September 2002. It further alleges that in January 2012, Applicant filed a Chapter 13 bankruptcy which included over \$137,000 in liabilities, and that the bankruptcy is still pending. (GX 2 and 3)

While attending college Applicant received several credit cards. At the time, her parents were paying for her education. She used the credit cards and used the money she earned from a part time job to pay the credit card bills. (Tr.15) However, during her third and fourth years of college, she had to pay for her education and expenses. She had student loans at the time in the amount of \$6,000. She admitted that she accumulated a large amount of credit card debt and did not fully understand how to manage her money. In 2002, she filed for Chapter 7 bankruptcy, and the debts, excluding the student loans, were discharged in September 2002. She learned to budget and manage her money, and to be fiscally responsible after her 2002 bankruptcy.

When Applicant graduated from college in 2005, she worked for federal contractors and normally worked two jobs. She was unemployed due to a reduction in force in 2010. This unexpected loss of employment resulted in an inability to pay her expenses. In addition, she had a child in 2006, but only received some child support for two years. (AX B) In 2008, the father of the child had a severe accident and was not able to work. Applicant helped him by allowing him to live with her and she paid his medical expenses. She was now responsible for the household expenses and her child. Before the 2008 incident, she was able to pay her car loan and, credit card loans. She was current on all financial obligations.

As to SOR allegation 1.b, Applicant filed for Chapter 13 bankruptcy in 2012. She was advised to choose this option by her attorney. Before filing for bankruptcy she consolidated debts. She worked to pay her debts and expenses. The Chapter 13 bankruptcy allowed her to make monthly payments to her creditors. The total amount of liabilities was about \$137,000. The plan was for 60 months. The plan required her to make two \$450 payments, two \$665 payments, and \$765 payments for 30 months. The monthly payment for the remaining months would be \$1,115. Applicant consistently paid the required amounts for three years. She has paid approximately \$31,000. (AX F)

¹In August 2015, Applicant began a second job.

In July 2015, Applicant was again laid off from employment. (Tr. 34) Prior to being unemployed, she was earning \$54,000. She met the mean income test and converted to a Chapter 7 bankruptcy. The debts were discharged in September 2015. (GX 7)

Applicant emphasized that she completed the requisite financial counseling and obtained a certificate of debtor education in September 2015. (AX J) She lives within her means. She has not lived with her child's father since 2012, and does not provide him with any financial assistance. Nor does she receive any child support from him.

Applicant's net monthly income is \$2,790 from one job, and earns approximately \$2,100 from her second job. After monthly expenses, she has approximately \$1,405 net remainder. She has about \$8,000 in savings. (AX E) She has no new delinquent debts.

Applicant was candid at the hearing that she also has a payment plan with the IRS. Initially it was included in the bankruptcy plan. She pays \$227 a month and has already made the first payment ahead of schedule. (AX K)

Applicant's performance evaluations rate her as consistently "meets expectations" She has the ability to get things done. She manages resources carefully. (AX D). Applicant's landlord wrote a letter concerning Applicant's responsibility as a tenant since 2014. The landlord noted that Applicant pays her rent timely, keeps the property well maintained and is trustworthy. Also, she finds her to be responsible and an excellent tenant. (AX A)

Applicant submitted a letter of recommendation from a supervisor who praised her as a team lead. Applicant's job was demanding but she performed well. She was honest and reliable. She is highly recommended for her employment. (AX A)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, 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 in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant filed for bankruptcy in 2002 and the debts were discharged. In 2012, she filed for Chapter 13 bankruptcy and was making monthly payments. However, in 2015, when she became unemployed, the petition was converted to a Chapter 7 bankruptcy. Her credit reports confirm the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant's first bankruptcy was in 2002. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) has some application. The 2002 bankruptcy is more than 13 years old. The 2012 bankruptcy was due to unemployment and a medical issue with her child's father. She was making payments consistently until a 2015 job loss.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) has limited applicability. Applicant admits that in college she used credit cards and was not fiscally responsible. She had ten years of employment without having to resolve delinquent debts. She had two jobs and provided for her child. She supported the child's father and received no support. She paid her bills until she was advised to file a Chapter 13 bankruptcy in 2012. She consistently made her monthly payments. She had to convert to a Chapter 7 plan when she became unemployed again. Her loss of employment and the medical expenses incurred by her child's father were conditions beyond her control.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant as noted above used bankruptcy in 2002 which is a legitimate means to resolve debts. She worked two jobs often and consolidated debts when she could. She was advised to file a Chapter 13 bankruptcy in 2012 so that she could repay creditors, and through this method she paid her creditors more than \$30,000. Unfortunately, she again became unemployed and the bankruptcy was converted to a Chapter 7. The debts are discharged. FCMC AG ¶ 20(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) applies.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. She is a single mother who is the sole provider for her child. She graduated from college in 2005. She has had two jobs for a great portion of that time. Her child's father suffered a severe injury and Applicant paid his medical expenses. She has received no support. She filed for a Chapter 13 bankruptcy so that she could repay her creditors in 2012. Due to more unemployment, she had to convert the Chapter 13 to a Chapter 7 petition. She has exercised good-faith efforts to resolve the financial issues. She has received financial counseling as required through the bankruptcy process. She has a budget and is current on her expenses. She has no new debt.

She has a track record of financial responsibility. She consistently made her monthly payments to the bankruptcy trustee in her 2012 bankruptcy. When she faced unemployment again, she converted to a Chapter 7 on her attorney's advice. She has worked hard and has remained responsible. She is making payments on her IRS plan. She continues to overcome the challenges that she faces. She has favorable job reports and references. Applicant has presented sufficient mitigation in this case to overcome 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:	For Applicant
Subparagraph 1.b:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge