



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 12-10196  
 )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

02/09/2016

**Decision**

HOWE, Philip S., Administrative Judge:

On May 28, 2012, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On February 19, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on an unstated date. She answered the SOR in writing on May 11, 2015, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 30, 2015, and I received the case assignment on July 13, 2015. DOHA issued a Notice of Hearing on October 27, 2015, and I convened the hearing as scheduled on November 20, 2015. The Government offered Exhibits 1 through 8, which were received without objection.

Applicant testified and submitted Exhibits A through C, without objection. DOHA received the transcript of the hearing (Tr.) on December 3, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In her Answer to the SOR Applicant admitted the factual allegations in ¶ 1.a of the SOR. This allegation was the only one in the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 65 years old, married, and has three children from her first marriage and two stepchildren from her present marriage. They are all adults. Applicant is a truck operator for a defense contractor. She receives a salary. She operates the truck with her husband as a co-driver. Applicant has a current security clearance. (Tr. 9, 20-22, 27, 28; Exhibit 1)

Applicant's SOR alleges a tax debt owed to the federal Internal Revenue Service (IRS) for the 2008 tax year for \$35,881. The tax lien dates from 2011. Applicant used her income to pay other debts and fell behind on the federal taxes for 2008. (Tr. 29; Exhibits 6, 7)

Applicant testified the tax debt is a debt she owes. She stated she has an installment payment agreement with the IRS and pays \$500 each month since 2011. She first received a notice of tax due from the IRS in 2010. The balance now owed is about \$4,319.75 according to her testimony, the copies of the installment agreement, and the IRS notice of the tax balance submitted by Applicant, and her Answer. The IRS took her 2014 tax refund and she expects it will do the same to her 2015 tax refund, which will pay off the balance or close to it. She also disclosed the debt on her e-QIP. Applicant does not owe any other federal, state, or local taxes. She is current on all her financial obligations. She wants to get to a cash basis for payment of her debts. This debt is being resolved. (Tr. 29-40; Exhibits B, C, 5-8)

Applicant submitted a letter dated November 15, 2015, from the vice-president of the trucking company that employs Applicant. He stated she has worked for his company since 2003. Applicant and her husband are rated as very professional drivers, making all appointments on time, and in full compliance with all federal, state, and Department of Defense rules and regulations while working. (Exhibit A)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the 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, which are useful 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 (AG ¶ 2(a)). 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 avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated \$35,881 in delinquent tax debt from 2008 that apparently remained unpaid. Applicant has one delinquent debt listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be 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;

(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's tax debt arose in calendar year 2008. It is the only tax debt she has to pay because all her other taxes are paid and current. The statements she made at the hearing about paying her debts on time and trying to get to a cash only payment system show Applicant will not allow the same situation to occur in the future. This tax debt is a one-time situation and is not likely to recur. It does not cast doubt on her reliability, trustworthiness, or good judgment. AG ¶ 20 (a) is established.

Applicant pays her tax debt in an orderly manner pursuant to an IRS installment payment agreement. Therefore, there is clear proof from the evidence she presented that the tax debt is under control and being resolved. AG ¶ 20 (c) is established.

Applicant worked to get her tax debt paid by an installment agreement basis. She succeeded and the debt now is less than \$5,000 and the balance owed is being paid monthly at the rate of \$500 each time. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay her delinquent debt.

## **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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant only had the one tax debt from 2008 and is paying that debt down so that it may be completed within the next year. The \$500 monthly payment and the application of her 2014 and 2015 income tax refunds to the balance owed should resolve the debt totally in 2016. She did not plan in advance the withholding or quarterly payments for her joint return on the 2008 taxes. This failure to arrange the necessary tax withholding or payments has not been repeated nor is it likely to be so. There is no potential for any pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations.

### **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 |
| Subparagraph 1.a:         | 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.

---

PHILIP S. HOWE  
Administrative Judge