



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



In the matter of:)
)
) ISCR Case No. 12-10255¹
)
Applicant for Security Clearance)

Appearances

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

11/21/2015

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 April 15, 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 May 13, 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,

¹ The ISCR number was misidentified in the SOR. The above number is correct.

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 - C, F - N, Q, S, and U - Y, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 25, 2015.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. She has worked for her current employer since 2006. She seeks to retain a security clearance, which she has held since about 2007. She attended college for a period, but she did not earn a degree. She is married with a child and three stepchildren.²

Applicant has a history of financial problems. Her husband is a disabled veteran who is unable to work. Applicant admitted that she was irresponsible, and she neglected her financial obligations. The adjudicative process caused her to reevaluate her priorities, and she set about correcting her financial mess. She attempted to pay her debts on her own for a period. She then engaged the services of a credit-counseling company. She enrolled eight debts in the company's debt-management program (DMP). She pays the company \$268 per month. She is also paying other debts outside the plan.³

The SOR alleges 22 delinquent debts, but two of the debts are duplicates. Applicant was unable to admit or deny owing the unidentified \$161 medical debt alleged in SOR ¶ 1.d. She admitted owing all of the remaining debts at one point. Credit reports from March 2012 and October 2014 substantiate the debts. Applicant submitted a credit report from April 2015.⁴ The debts are addressed in the table below.

SOR	AMOUNT	STATUS	EVIDENCE
1.a Auto loan	\$4,879	Deficiency on loan after vehicle was repossessed. May 2015 settlement agreement for \$1,512, payable through \$79 monthly payments.	Tr. at 41-42; Response to SOR; AE A.
1.b Payday loan	\$1,492	April 2015 payment agreement for \$114 monthly payments. Placed in DMP.	Response to SOR; AE B, X.
1.c & 1.i (duplicate accounts) Satellite television	\$522	Paid \$182 toward \$365 settlement in May 2015. Placed in DMP.	Response to SOR; AE C, I, X.
1.d Medical debt	\$161	Unidentified debt not listed on 2015 credit report.	Response to SOR; AE W.

² Tr. at 30, 33-34, 36; GE 1, 2.

³ Tr. at 29-34, 36-39; Applicant's response to SOR; GE 1, 2.

⁴ GE 2-5.

1.e Debt	\$133	Stated that debt paid. No documentation.	Response to SOR.
1.f Collection company/medical debt	\$29	Paid May 2015.	Response to SOR; AE F.
1.g Utility company	\$35	Paid May 2015.	Response to SOR; AE G.
1.h Auto loan	\$12,114	Deficiency on loan after vehicle was repossessed. Stipulated judgment with balance of \$6,827 and \$300 monthly payments.	Tr. at 33, 40-41; Response to SOR; AE H.
1.j Collection company/medical debt	\$302	Creditor deleted account from credit report.	Response to SOR; GE 3, 4; AE J, W.
1.k Collection company	\$168	Creditor deleted account from credit report.	Response to SOR; GE 3, 4; AE K, W.
1.l Collection company/medical debt	\$808	Stipulated judgment with settlement of \$912 and \$100 monthly payments. Placed in DMP.	Response to SOR; AE L, X.
1.m Collection company	\$474	Settled.	Response to SOR; AE M.
1.n Collection company	\$705	Payment arrangements. Placed in DMP.	Response to SOR; AE N, X.
1.o Collection company	\$219	Stated paid. Not listed on two most recent credit reports.	Response to SOR; GE 3, 4; AE W.
1.p. Collection company/apartment	\$426	Placed in DMP.	Response to SOR; AE X.
1.q Collection company/bank	\$415	Settlement agreement. Placed in DMP.	Response to SOR; AE Q, X.
1.r Collection company/telecommunications company	\$406	Stated paid. Not listed on two most recent credit reports.	Tr. at 43; Response to SOR; GE 3, 4; AE W.
1.s Collection company/cable company	\$333	Unresolved. Not listed on two most recent credit reports.	Response to SOR; GE 3, 4; AE W.
1.t Collection company/gym membership	\$925	Payment plan. Not listed on two most recent credit reports.	Tr. at 44; Response to SOR; GE 3, 4; AE W.
1.u Collection company/medical debt	\$1,061	Placed in DMP.	Response to SOR; AE U, V, X.

1.v Collection company	\$1,487	Placed in DMP.	Response to SOR; AE X.
------------------------	---------	----------------	------------------------

Applicant works a second job to assist in her efforts to address her financial problems. She uses the income from her second job to pay her delinquent debts. She credibly testified that she will continue to pay her debts until they are all resolved.⁵

Applicant submitted several letters attesting to her excellent job performance, leadership, work ethic, honesty, trustworthiness, dependability, dedication, reliability, and integrity.⁶

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

⁵ Tr. at 33-35, 39-40, 44-50.

⁶ AE Y.

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 or unwilling 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's financial problems resulted from her irresponsibility and not from events that were beyond her control. AG ¶ 20(b) is not applicable.

Applicant matured and realized she had to address her financial problems. She obtained a second job and started repaying her debts. She required additional assistance and contracted with a credit-counseling company. She enrolled eight debts in the company's DMP. She credibly testified that she will continue with her payment plans until the debts are paid.

I find that Applicant established a plan to resolve her financial problems, and she took significant action to implement that plan. She acted responsibly and made a good-faith effort to pay her debts. There are clear indications that her financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶ 20(a) is not yet completely applicable because Applicant is still in the process of paying her debts.

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.

Applicant has matured from the irresponsible person who did not pay her debts. She is working two jobs and is a highly regarded and trusted employee. She was a credible witness. I am satisfied that she is committed to paying her debts.

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.v:	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