



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



In the matter of:)
)
) ISCR Case No. 12-11676
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

08/15/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On April 19, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order (EO) 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 on September 1, 2006.

On May 10, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 24, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 5, 2013, and the hearing was convened as scheduled on July 17, 2013. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5 that were admitted into evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F that were admitted into evidence without objection. The record was left open until July 31, 2013, to provide Applicant an opportunity to submit additional matters. She submitted further documents that were marked as AE G through K and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 25, 2013.

Procedural Matters

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Findings of Fact

Applicant is a 40-year-old prospective employee of a defense contractor. In the past, she has worked on-and-off for defense contractors overseas. Although she was unemployed at the time of the hearing, a defense contractor was sponsoring her for a security clearance so that she could work for that company again overseas. She completed the 11th grade of high school and obtained a general educational development (GED) certificate in 1990. She is divorced and has four daughters, ages 12, 19, 21, and 24. She is seeking a security clearance for the first time.²

The SOR alleged that Applicant received a Chapter 7 bankruptcy discharge in 2006 and had 12 delinquent debts totaling \$37,052. In her Answer to the SOR, Applicant admitted 12 of the SOR allegations with comments. She denied the allegation in SOR ¶ 1.g, a collection account in the amount of \$12,785. Her admissions are incorporated as findings of fact.³

Shortly after separating from an abusive husband in October 1996, Applicant opened a restaurant with her grandparents. She was 24 years old at the time. The restaurant was small, but became successful. In her words, it did "good," "not phenomenal." It was featured on television and in magazines and received awards. Celebrities patronized it. She noted that, if customers did not have enough money to eat there, she still fed them because that is the way she was raised. For over five years, she also worked as an evening supervisor at a hotel, but eventually gave up that job to focus on the restaurant.⁴

In February 1998, Applicant was involved in a serious vehicle accident. She was ejected from the vehicle and mistakenly pronounced dead at the scene. She incurred major medical bills as a result of that accident. Additionally, her grandfather, who worked at the restaurant and assisted it financially, developed chronic medical problems

¹ Tr. at 13-14, 71.

² Tr. at 7-8, 36, 72-73; GE 1, 3.

³ Applicant's Answer to the SOR.

⁴ Tr. at 19-22, 37, 40-42, 44-47; GE 1; AE A.

and eventually passed away in February 2004. She stated that she was responsible for some of her grandfather's medical bills and his funeral expenses. After her grandfather passed away, the restaurant began encountering financial problems. In the spring of 2005, Applicant filed Chapter 7 bankruptcy. She received a bankruptcy discharge in 2006. About \$15,000 of her debts was discharged in that bankruptcy.⁵

Due to a downturn in the economy, Applicant's restaurant closed in February 2010. After the restaurant closed, she was unemployed until April 2010. From April 2010 to December 2011, she worked for a defense contractor as a billeting and logistics technician in Iraq. In that job, she earned about \$60,000 annually. Following that job, she was unemployed again from January 2012 to July 2012. In August 2012, she began working for another defense contractor as a site manager at a military base in Kyrgyzstan. She has been unemployed since that job ended.⁶

Applicant disputed the debt alleged in SOR ¶ 1.g, a collection account in the amount of \$12,785. She testified this was her daughter's medical bill that was incurred when her daughter was an adult. This bill was incurred while Applicant was working overseas. She contacted the collection company, explained the circumstances surrounding its incurrence, and was told that the collection account would be taken off of her credit report. It was deleted from her most recent credit report.⁷

Applicant satisfied the debts alleged in SOR ¶¶ 1.e (\$203) and 1.k (\$142). Her most recent credit report indicated that the debt in SOR ¶ 1.j was discharged in her bankruptcy. With the exception of the debt in SOR ¶ 1.c (\$270), all of the remaining unresolved debts (SOR ¶¶ 1.b, 1.d, 1.f, 1.h, 1.i, 1.l, and 1.m) became delinquent in either 2007 or 2008.⁸

Applicant testified that she was responsible for the remaining unresolved debts and intended to pay them when she was financially able to do so. She indicated that she has sold jewelry to pay bills. One of her daughters wrote a letter indicating that their family would at times have no electricity at home so that Applicant could pay bills at the restaurant. Applicant has received financial counseling from a debt consolidation company. The company has prepared a debt consolidation program that includes the debts in SOR ¶¶ 1.b, 1.c, 1.i, and 1.l. Applicant also testified that she is negotiating with the creditor of the debt in SOR ¶ 1.f for a settlement amount so that it could be included in the debt consolidation program. Her intent is to institute the debt consolidation program upon obtaining her next job.⁹

⁵ Tr. at 40-42, 44-50; GE 2.

⁶ Tr. at 19-22, 50-54; GE 1, 2, 3. Applicant testified that the restaurant closed in June 2009, but her Electronic Questionnaire for Investigations Processing (e-QIP) indicated her employment there ended in February 2010. See Tr. at 35-36.

⁷ Tr. at 21, 54-57, 67-69; GE 2, 3, 4, 5.

⁸ Tr. at 20, 61-63, 65; GE 2, 3, 4, 5; AE C, D.

⁹ Tr. at 21-22, 57-61, 63-70; GE 2; AE E.

In her post-hearing submission, Applicant provided an email from a health care provider that indicated they had no record of the debt in SOR ¶ 1.h. One collection agency is handling the medical debts in SOR ¶¶ 1.b and 1.m. Applicant provided documentation showing she made payments of \$10 and \$15 to that collection agency and indicated that she will continue to make payments as she is able to do so. She also provided documentation showing she submitted a complaint to a state department of consumer affairs asking that they conduct an inquiry to determine whether the debt in SOR ¶ 1.g was the result of deceptive trade practices.¹⁰

Applicant testified openly and honestly about her financial situation. She currently resides with her grandmother, uncle, and youngest daughter. She is the primary provider for the household. She has received no child support from the fathers of her children. Her three eldest daughters began living on their own shortly after she returned from Iraq.¹¹

Applicant presented a number of letters of reference. The mayor pro tem of a major city has known her for a number of years and stated that he was “impressed with her integrity, business acumen and her sense of duty and responsibility to her faith, family, and community.” Other friends, co-workers, and community members echoed his comments. They praise her for her selfless service and her dedication to helping others.¹²

Applicant’s supervisor in Iraq described her as dedicated and capable of handling any situation with thoughtfulness and maturity. She received a number of letters of appreciation for her overseas employment. Her senior project manager in Iraq stated:

[Applicant’s] personal sacrifice during this time brings great credit to [herself and the defense contractor]. I am confident that history will show the incredible contributions the civilian contractors such as you have brought to the battlefield as part of the Logistical Civilian Augmentation Program III and in support of the global war on terrorism.¹³

The executive director of an abused women’s shelter noted that Appellant volunteered to be a spokesperson for the shelter, served on its board of directors, and donated the use of a room in her restaurant for fundraising events.¹⁴

¹⁰ AE G-K.

¹¹ Tr. at 38-40, 43-44, 53-54; AE A.

¹² AE A.

¹³ AE A, B.

¹⁴ Tr. at 57-59; AE G.

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 that 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant received a Chapter 7 bankruptcy discharge in 2006. Since then, she accumulated delinquent debts that she was unable to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 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;
- (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.

A security clearance adjudication is not a debt collection procedure. Instead, it is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.¹⁵ An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first.¹⁶

Due to an economic downturn, Applicant's restaurant, which she operated for about 14 years, failed and closed in 2010. All of the unresolved debts, except for a \$270 consumer debt, date back to the financial difficulties she incurred while operating her restaurant. Following the closure of the restaurant, she was unemployed for about three months. She then worked for a defense contractor in Iraq for about 21 months. On her salary of \$60,000 per year, she supported herself, her grandmother, four daughters, and uncle. After her job in Iraq, she was unemployed for about six months before working overseas again for another defense contractor in Kyrgyzstan.

While Applicant has struggled financially in recent years, she has done the best she could with her limited resources. She has lived within her means and incurred no new delinquent debts. She sold her jewelry to pay bills. She satisfied the debts in SOR ¶¶ 1.e, and 1.k and made small payments on the debts in SOR ¶¶ 1.b and 1.m. She has disputed the two largest debts, SOR ¶¶ 1.f (\$18,869) and 1.g (\$12,785). The debt in SOR ¶ 1.g has been removed from her credit report, while the dispute concerning the debt in SOR ¶ 1.f is apparently being processed. She has acted responsibly under the circumstances. She testified that she will resolve her delinquent debts. I found her to be a credible witness. Those debts were incurred a long time ago under circumstances that do not cast doubt on her current reliability, trustworthiness, and good judgment. Upon obtaining her prospective employment, her financial problems are unlikely to recur. AG ¶¶ 20(a) and 20(b) apply. AG ¶¶ 20(c), 20(d), and 20(e) partially apply.

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

¹⁵ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

¹⁶ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The whole-person evidence in this case is compelling. Applicant is a selfless individual. She consistently makes personal sacrifices to place the needs of others ahead of her own. She twice served overseas in harsh conditions. By working in Iraq, she put herself in harm's way to support U.S. military personnel. She is seeking to work overseas again to help our troops. She is a person of character and integrity who will honor her commitments. The evidence shows that she is a reliable and trustworthy individual who exercises good judgment. In short, both the applicable mitigating conditions and the whole-person analysis support a favorable clearance decision. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under the financial considerations guideline.

Formal Findings

Formal findings 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.m:	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.

James F. Duffy
Administrative Judge