



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



In the matter of:)
)
 REDACTED) ISCR Case No. 13-00761
)
 Applicant for Security Clearance)

Appearances

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

03/28/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant established her eligibility for access to classified information. Her recent financial trouble is directly attributable to matters beyond her control. She and her husband were medically discharged from the military, and then suffered long-term unemployment and underemployment. She also incurred significant debts after being recently diagnosed with cancer. She submitted documentary proof of responsibly handling her debts and placing her financial house in order. Her past financial situation no longer raises concerns about her judgment, reliability, and trustworthiness. Clearance is granted.

Statement of the Case

On August 28, 2013, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On September 19, 2013, Applicant answered the SOR, waived her right to a hearing, and requested a decision on the written record.

On December 18, 2013, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government's proposed findings of fact, argument, and eleven documentary exhibits. On January 31, 2014, Applicant submitted a response to the FORM (Response). She did not object to Government Exhibits (Gx.) 1 – 11, and they are admitted into the record. On February 10, 2014, I was assigned Applicant's case and granted her request for an extension of time to submit additional documentary evidence. She timely submitted exhibits (Ax.) A – M, which were admitted without objection.¹ The record closed on March 26, 2014.

Findings of Fact

Applicant, 30, is a business manager for a federal contractor. She had a difficult childhood and upbringing. She was abandoned by her mother while still a baby. She ended up raising her younger sister and, after turning 19, became her sister's legal guardian. She enlisted in the U.S. military in 2001. Her military service included a year-long deployment to Iraq at the start of Operation Iraqi Freedom. She frequently handled and safeguarded sensitive information without issue. While on active duty, Applicant earned her bachelor's degree, with a 4.0 grade point average (GPA). When she returned from Iraq, she secured a part-time job to provide for her sister. She was honorably discharged in 2006 due to a service-connected disability, which ended her military career.

Applicant met her husband in the military. He is also an Iraq war veteran and was also medically discharged from the military in 2006. He has an 11-year-old child, who Applicant has helped raise since he was an infant. Applicant's husband was granted full custody of the child after it was discovered that the child's biological mother was abusing the child.

Applicant's financial problems started in about 2006, after she and her husband were medically discharged from the military and were unable to find employment. They began using credit cards to pay household expenses. Applicant's tax returns reflect a significant decrease in household income for the 2006 tax year.

Applicant was finally able to secure a job through a temporary employment agency in 2007. She supplemented her earnings with part-time work as a tutor. Despite her financial issues, Applicant continued her education, maintained a 4.0 GPA, and earned her master's degree in 2008. The following year, she was hired as a contractor by the Department of State (DOS), handling and managing large sums of U.S. Government funds. Applicant was the sole source of income for her family from 2007 through 2010.

Applicant's husband was underwent surgery for his service-connected injury through the Department of Veteran's Affairs (VA) in 2009. He was hired as a corrections officer in 2011. He had to quit his job a few months later when Applicant was hired by

¹ Applicant pre-marked her exhibits with numbers. In order to avoid confusion, I have renumbered them using letters.

her current employer, whose offices were located in another state. Applicant again became the sole source of income for the family and, shortly after starting her new job, was diagnosed with cancer. Applicant and her husband were finally able to start getting back on their feet financially in late 2012, when he secured a full-time job and her doctors advised her that she was cancer free.²

Applicant accumulated over \$50,000 in delinquent debt following her and her husband's medical discharges from the military. The majority of Applicant's debt load was for student loans. She established a detailed budget, whereby she prioritized her debts and systematically resolved them. She submitted documentation showing that her student loans are current. She also presented proof of consistent monthly payments for over six months.³

Applicant also incurred tax debt because she had insufficient taxes deducted from her pay. She submitted a recent pay stub, which reflects that she no longer claims any exemptions. She has sufficient taxes taken out of her pay, as evidenced by IRS documents noting she was entitled to a refund in 2013. She agreed with the IRS on a payment plan in 2011 to resolve her tax debt. She submitted the payment agreement, as well as documented proof of paying per the terms of the plan for the past three years. She also presented proof of satisfying her federal tax liens and resolving her state tax debt by paying per the terms of an agreed upon payment plan.⁴

Applicant also submitted proof of paying per the terms of agreed upon payment plans on six other debts totaling nearly \$20,000, including debts incurred for treatment of her cancer.⁵ None of these debts are listed in the SOR. Applicant's January 2013 credit report reflects numerous accounts that were delinquent as either paid or with a zero balance.⁶

Applicant's SOR lists eight delinquent debts totaling approximately \$17,000. She disputes the medical debts alleged in SOR ¶¶ 1.a and 1.b, which together total about \$1,400. Both debts were for medical treatment related to her service-connected disability that should have been covered by the VA. She has filed a dispute through the credit bureaus challenging the debts.⁷ She submitted proof of payment of the \$250 debt alleged in SOR ¶ 1.f.⁸ Applicant set up a payment plan to resolve the \$1,900 debt

² Gx. 5, 7; Ax. A, Ax. E., Ax. M at 2, 4, 10.

³ Gx. 7, Attachments 1, 9, 10-11; Ax. F – G, Ax. K.

⁴ Gx. 7, Attachments 7, 13; Ax. B – C.

⁵ Gx. 7 at 6-8 and Attachments 3-6, 8; Ax. H (satisfaction of car loan); Ax. I (satisfaction of medical debt); Ax. 10 (satisfaction of step-child's school expense)

⁶ Gx. 7; Ax. D.

⁷ Answer; Gx. 10; Ax. E.

⁸ Ax. L.

alleged in SOR ¶ 1.h, and submitted documentary proof that the debt has been canceled.⁹ In accordance with her written budget, Applicant is in the process of resolving the remaining four SOR debts.¹⁰

Applicant disclosed her financial problems and delinquent debts on her security clearance application. She then voluntarily discussed her financial problems and delinquent debts at length during her security clearance background interview and in her detailed response to financial interrogatories.¹¹ Numerous individuals who have known Applicant over the past 10 years, in and out of uniform, wrote character letters attesting to her high moral character and work ethic.¹² The president of the company for whom she currently works, a retired Army sergeant major, states that he selected Applicant for her prior position out of a pool over sixty applicants. He writes that Applicant “maintained meticulous records,” “protected confidential information,” and made certain that all internal and external reporting requirements were met. He hired Applicant for her current position because of the trust and confidence he has in her, to include her ability to protect and safeguard sensitive and proprietary information.¹³

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. 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.” Directive ¶ E3.1.15. An applicant also bears the ultimate burden of persuasion to establish his or her eligibility.

⁹ Answer; Gx. 10.

¹⁰ Answer; Gx. 6 – 7; Ax. A.

¹¹ Gx. 5 – 7.

¹² Ax. M.

¹³ Ax. M at 14-15.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.¹⁴

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. 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 an 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.¹⁵

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The potential security concern regarding an applicant with financial problems is explained at 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.

Applicant's accumulation of a substantial amount of debt raises this concern and establishes the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

¹⁴ See *also*, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) ("Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.").

¹⁵ See *generally*, ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments).

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were raised by the evidence:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant established these mitigating conditions. Her financial problems are not related to frivolous or reckless spending or other issues of a security concern. Rather, they are directly attributable to matters beyond her control. She and her husband were medically discharged from the military and found themselves looking for work at the beginning of the recent economic recession. She was unable to find stable employment for several years and her husband's service-connected disability left him unable to find a job until 2011. When Applicant finally secured her current job, she was diagnosed with cancer that put added financial strain on the family's already troubled finances. Applicant did not walk away from her financial obligations nor succumb to these financial pressures. Instead, she put her business and accounting degrees to work by preparing a detailed budget to resolve her debts and then implemented the plan.

Over the course of the past few years, Applicant has: (1) brought her student loans current and paid them on a consistent monthly basis; (2) established payment plans to resolve her tax debts, consistently paid per the plans for the past three years, and satisfied her federal tax liens; (3) resolved at least \$20,000 in debt not listed in the SOR, (4) disputed two SOR debts and submitted documentation of her basis for disputing the debts, (5) paid two other SOR debts; and (6) started making arrangements to satisfy the remaining four SOR debts. This demonstrated track record of debt repayment and sound money management leaves me firmly convinced that she will resolve her remaining debts in short order and continue to manage her finances in a responsible fashion.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁶ From an early age, Applicant has exhibited the qualities and met the standards the Government expects of those entrusted with this nation's secrets. She enlisted in the U.S. military in 2001 and is an Iraqi war veteran. While in the military, she routinely handled confidential and sensitive information relating to other service members without issue. She handled and managed substantial U.S. Government funds as a DOS contractor also without issue. She has earned the trust and confidence of her current employer, who has witnessed her protect and safeguard sensitive and proprietary information over the last few years. This favorable history of responsibly handling and safeguarding sensitive information, while going through the financial problems of the last several years, also mitigates against the security concerns at issue. After considering and weighing all the evidence, I find that Applicant's recent financial trouble does not negate the strong record evidence regarding her reliability, trustworthiness, and good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.h: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

¹⁶ The non-exhaustive list of adjudicative factors are: (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.