



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 13-01095
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

08/17/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns raised by her past financial troubles, which were attributable to matters beyond her control. She resolved or is in the process of resolving the debts she incurred in raising her children on her own. She has received financial counseling and manages her personal finances in the manner expected of those granted access to classified information. Clearance is granted.

History of the Case

On December 3, 2013, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that her circumstances raised security concerns under the financial considerations guideline.¹ In January 2014, Applicant responded to the SOR, but it was not received by the Department of Defense Consolidated Adjudications Facility. Applicant's security clearance was subsequently revoked due to her purported failure to timely respond to the SOR.

¹ This action was taken under Executive Order (E.O.) 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 implemented by DOD on September 1, 2006.

On March 17, 2015, Applicant once again answered the SOR (Answer). Her clearance was reinstated pending her request for a hearing to establish her continued eligibility for access to classified information.²

On April 8, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for June 18, 2015. The hearing was convened as scheduled.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 – 3. Applicant testified and offered Applicant's Exhibits (Ax.) A – D. She requested additional time post-hearing to submit further documentary evidence. I granted her request, and she timely submitted Ax. E – M. All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on June 26, 2015, and the record closed on July 14, 2015.³

Findings of Fact

After a thorough review of the pleadings, exhibits, and transcript I make the following findings of fact:

Applicant is divorced with two children. She is a high school graduate with some college. She served in the U.S. military for 12 years, including a year-long overseas tour at a military base close to the demilitarized zone in Korea. After being honorably discharged from the military, Applicant became a federal contractor. She was working at the Pentagon during the early morning hours of September 11, 2001. Her shift ended shortly before the terrorist attack and her office was destroyed in the attack. She worked around the clock for about a year after the attack in support of DOD and its personnel. She has held a security clearance since 2006 without issue, and is current on all required security training. She started working for her current employer in April 2014.⁴

Applicant raised her children primarily on her own without financial or other support from her former husband. Her former husband owes a substantial amount in court-ordered child support. Applicant's finances were also impacted by: (1) short-term unemployment; (2) substantial medical debts incurred to care for her youngest child at a time when she did not have medical insurance; and (3) the financial support she provided her eldest daughter, who recently graduated from college, when her daughter had a child out-of-wedlock. Applicant went into debt to help her children.⁵

² Department Counsel explained that the apparent delay in processing Applicant's case was occasioned by matters beyond the parties' control. (Tr. at 9; see *also*, Answer, Letter from Facility Security Officer). Based on the parties' representations and the evidence presented, I find that Applicant suffered no prejudice from the delay. See *generally*, ISCR Case No. 08-10170 (App. Bd. Jul. 8, 2011).

³ The Government's position regarding Applicant's post-hearing exhibits was marked Hearing Exhibit (Hx.) III. Hx. I – II are the parties' respective list of exhibits.

⁴ Tr. at 15-21, 36, 42-44; 47-50; Gx. 1.

⁵ Tr. at 21-25, 38-39.

Applicant paid or is paying per agreed-upon payment plans the SOR debts listed at 1.a, 1.b, 1.e, 1.g, and 1.h, which together total over \$16,500. She submitted documentation to substantiate the basis of her dispute of the remaining SOR debts. She recently received a substantial pay increase at work. She developed a budget with the assistance of a certified financial counselor and sets aside a sufficient amount of her pay each month to resolve her debts and pay for unexpected expenses. By sticking to this budget, Applicant was recently able to pay for expensive car repairs without incurring further debt. She does not have credit cards. She pays her mortgage on time and has not incurred other delinquent debt beyond those listed in her December 2013 SOR. She has resolved or is in the process of resolving the SOR debts.⁶

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 eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865, § 2.

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 commonsense 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. On the other hand, 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 has the ultimate burden of persuasion to establish their eligibility.

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, recognizing the paramount importance of protecting national security in all suitability determinations, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.⁷

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

⁶ Tr. at 25-37, 44-49; Ax. A – Ax. M; Gx. 1; .

⁷ 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.”).

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.

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 under this guideline 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 delinquent debt raises the financial considerations security concern. The record evidence raises the disqualifying conditions at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts;” and 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions are potentially 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 incurred debt to care for her children, and her inability to pay her debts was caused by several matters beyond her control. She did not ignore her financial obligations. Instead, she contacted her creditors and has paid or is in the process of paying the SOR debts she recognizes. She established a track record of resolving over \$16,500 in debt, and submitted documentation to substantiate the basis of her dispute regarding the remaining SOR debts. She has received financial counseling and manages her finances in a responsible manner. AG ¶¶ 20(a) through 20(e) apply.

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).⁸ Applicant's past financial problems were primarily a consequence of having to raise two children on her own without financial or other support from her former husband. Although it took Applicant some time to address her troubled finances, she now has a firm control over her financial situation. Additionally, her past service to the nation, both in and out of uniform, as well as her security record, provides sufficient assurance that she will continue to handle and safeguard classified information in a responsible and conscientious manner. Overall, the record evidence leaves me with no questions or doubts about her eligibility for a security clearance.

Formal Findings

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a – 1.j:	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

⁸ 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.