



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



In the matter of:)
)
 REDACTED) ISCR Case No. 13-01331
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

05/27/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant established her eligibility for access to classified information by mitigating the security concerns raised by her past financial instability. Her past financial problems were mainly attributable to matters outside of her control, principally, a sudden and unexpected separation from her husband that left her solely responsible for the care and support of her four children. She secured full-time employment, took control of her finances, and resolved her past-due debts. Applicant's recent track record of debt repayment and responsible management of her finances mitigates the security concerns at issue. Clearance is granted.

Statement of the Case

On February 11, 2014, 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 March 15, 2014, Applicant answered the SOR and requested a hearing (Answer). With her Answer, Applicant submitted 13 enclosures (Encl.).

On April 8, 2014, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing for May 14, 2014. The hearing was held as scheduled. Department Counsel offered exhibits (Gx.) 1 – 10 in their case-in-chief. Applicant testified and offered exhibits (Ax.) A – F. All exhibits were admitted without objection. The hearing transcript (Tr.) was electronically received on May 22, 2014.

Findings of Fact

Applicant, 32, has been working for her current employer since about October 2013. She is married, but separated from her husband. She has four children who she is supporting and raising principally on her own. She suffered from periods of unemployment and underemployment following the birth of each of her children. She is currently pursuing a college degree while working full time. She submitted a security clearance application in connection with her current job as a defense contractor. Applicant's supervisor, co-worker, and professor write favorably regarding her judgment, reliability, and trustworthiness. (Tr. at 30-31; Gx. 1; Ax. F)

Applicant married in 1999, when she was 17 years old. She allowed her husband, who was the primary breadwinner, to manage the family's finances. After some time, she realized that he was overspending and they were unable to pay for their recurring and unanticipated medical expenses. Applicant tried to convince her husband to follow a budget, but he refused. His overspending and her inability to secure suitable employment left them unable to pay their debt. In 2004, Applicant filed for Chapter 7 bankruptcy and had about \$15,000 in marital debt discharged. The majority of the debt was for uninsured medical expenses. (Tr. a 31-33; Answer; Gx. 1 – 3)

Following the 2004 bankruptcy discharge, Applicant and her husband's finances stabilized for a time. However, the purchase of a home at the height of the recent housing bubble, his overspending, and her inability to secure suitable long-term employment again left them unable to pay their debts. In 2010, Applicant and her husband filed for Chapter 13 bankruptcy. The Chapter 13 approved bankruptcy plan required payments of \$658 per month for 55 months. Applicant paid on a consistent monthly basis for about three years, paying a total of nearly \$18,000 into the plan.

In about May 2013, Applicant's husband left the marital home. He stopped contributing towards the household expenses and, initially, did not provide financial support his children. Applicant lost her job a few weeks later and was unable to continue paying the Chapter 13 plan. Upon the advice of counsel, Applicant voluntarily dismissed the bankruptcy case. She did not convert to Chapter 7 because she wanted to do the right thing and repay her creditors. (Tr. at 30, 33-39, 47; Gx. 4 – 7; Answer, Encl. 3)

Applicant secured full-time employment in October 2013 and shortly thereafter addressed her debts. She has satisfied all the SOR debts. With her Answer, Applicant submitted documentary proof of settling and paying the six debts alleged in SOR ¶¶ 1.d – 1.g and 1.k, which total nearly \$5,000. (Answer, Encl. 7 – 11) She also submitted proof of disputing and the basis of her dispute for the cellphone debt alleged in SOR ¶

1.c. She subsequently won the dispute with the creditor and paid the actual amount owed. (Answer, Encl. 1 – 2, 6; Ax. A, B, E) Applicant also submitted documentation of initially disputing the debt in SOR ¶ 1.h. She then worked out a settlement with the creditor and authorized an automatic payment from her checking account to pay the debt. Before the payment transaction was completed, the creditor recognized her dispute and removed the debt from her credit report. (Answer, Encl. 1 – 2, 12 – 13) As for the two delinquent credit card debts alleged in SOR ¶¶ 1.i and 1.j, Applicant contacted the creditor collecting on these two debts, negotiated a settlement, and paid both debts.¹ (Tr. at 39-40, 45-46; Answer at 4; Ax. A, C – E)

Applicant was able to resolve her debts by using an \$8,000 tax refund and applying it to pay her past-due debts. She also receives a grant from her school for living expenses, which provides extra income and offsets the lack of adequate financial support for her children from their father. She is currently in the process of getting a divorce from her estranged husband. She has no credit cards and does not have any consumer-related debt. Applicant is a self-professed “extreme couponer”² and shops only at thrift stores for clothing for herself and her children. Applicant’s frugality has allowed her to pay her family’s monthly expenses on time and set aside money to pay debts and unexpected emergencies, without having to rely on high-rate credit cards or loans. She is currently pursuing an undergraduate degree in business management and accounting. She established a budget for her family based on the financial principles learned from her accounting courses. (Tr. at 31, 41-49)

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. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

¹ The SOR does not list the amount allegedly owed on either of these debts. After reviewing Gx. 6 and Ax. C – D, I find that these debts together totaled less than \$2,000.

² Tr. at 46-47.

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, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.³

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.⁴

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.

³ 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.”)

⁴ See ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments).

Applicant's history of financial instability 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.

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's recent financial problems were mainly attributable to matters outside of her control, notably, her estranged husband's decision to abandon the family. Applicant was left to financially support herself and her four children. She then lost her job on the heels of the separation and was unable to continue paying the Chapter 13 plan, which she had consistently paid for three years. Applicant did not walk away from her debts. Instead, after securing full-time employment and taking control of her family's finances, she contacted her creditors and resolved her debts. She either negotiated a settlement and paid or successfully disputed her debts. Applicant's recent track record of debt repayment and how she responsibly manages her finances mitigate the financial considerations concern. Her past financial problems no longer raise doubts about her judgment, reliability, or trustworthiness. 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

