



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-00051
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

July 31, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on September 9, 2013. (Government Exhibit 4.) On February 26, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. The action was taken under Executive Order 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on March 19, and April 12, 2014 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 12, 2014. This case was assigned to me on May 16, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2014. I convened the hearing as scheduled on June 19, 2014. The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant submitted Applicant Exhibit A, which was also admitted without

objection, and testified on her own behalf. Applicant asked that the record remain open for the receipt of additional documents. DOHA received the transcript of the hearing (Tr.) on June 24, 2014. Applicant timely submitted Applicant Exhibit B, which was admitted without objection. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Amendment to SOR

The Government, through Department Counsel, sent a proposed Amendment to the Statement of Reasons (Amendment) to Applicant on May 12, 2014. The Amendment would add a single allegation under Guideline E. Applicant acknowledged receiving the Amendment, answering it, and returning it to DOHA. This document has not been found. However, Applicant verbally stated she received the Amendment, and admitted the allegations in it. The SOR is hereby amended to include Paragraph 2. (Tr. 17-20, 27-28.)

Findings of Fact

Applicant is 46 and single. She is employed by a defense contractor and is attempting to retain a security clearance in connection with that employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this Paragraph. Those admissions are findings of fact. She also submitted additional information to support her request for a security clearance, including her statements during a personal subject interview (GE 6).

The SOR lists nine delinquent debts, totaling approximately \$24,744. The existence and amount of most of these debts is supported by credit reports dated September 17, 2013; and June 18, 2014. (Government Exhibits 5 and 8.) According to Applicant, her financial problems began after she co-signed a note for her then fiancé to buy a car. He lost his job, left her, and stopped paying the car loan. In addition, Applicant's hours were cut by her employer in about 2009, which seriously affected her ability to pay any of her debts beyond the bare necessities of life. (Answer; Tr. 30-32, 35-41.)

In order to resolve her financial difficulties Applicant made the decision to file for Chapter 7 bankruptcy relief in 2014. She showed the SOR to the bankruptcy document preparer for her to use when filling out the schedules. (Answer; Tr. 42-43.) She filed her petition for relief on March 19, 2014. (Applicant Exhibit A.) Applicant received a discharge in bankruptcy on July 7, 2014. (Applicant Exhibit B at 3.) She received the

mandatory credit counseling required by the bankruptcy court. (Applicant Exhibit B at 9-11.)

Applicant testified that her financial situation is generally stable. She is able to pay her monthly bills with her current income. (Tr. 45-47.)

The current status of the debts is as follows:

1.a. Applicant admits that she was indebted to a creditor for a loan in the amount of \$3,138. This debt was included in Applicant's bankruptcy petition. (Applicant Exhibit B at 38.) This debt is resolved.

1.b. Applicant admits that she was indebted to a creditor for a loan in the amount of \$315. This debt was included in Applicant's bankruptcy petition. (Applicant Exhibit B at 38.) This debt is resolved.

1.c. Applicant admits that she was indebted to a creditor for a loan in the amount of \$502. This debt was included in Applicant's bankruptcy petition. (Applicant Exhibit B at 38.) This debt is resolved.

1.d. Applicant admits that she was indebted to a jewelry company for a bad debt in the amount of \$117. This debt was included in Applicant's bankruptcy petition. (Applicant Exhibit B at 37.) This debt is resolved.

1.e. Applicant admits that she was indebted to a creditor for a credit card debt in the amount of \$516. This debt was included in Applicant's bankruptcy petition. (Applicant Exhibit B at 37.) This debt is resolved.

1.f. Applicant admits that she was indebted to a creditor for the remainder of an automobile loan after repossession in the amount of \$4,132. This debt was included in Applicant's bankruptcy petition.¹ (Applicant Exhibit B at 33.) This debt is resolved.

1.g. Applicant admits that she was indebted to a creditor for a credit card debt in the amount of \$2,679. Applicant's bankruptcy petition does not include a creditor by this name. There are three debts on Applicant's Schedule F that do not have counterparts in the SOR. While it is possible that one of them may be this debt, the record is insufficient to prove that point. (Applicant Exhibit B at 37-38.) This debt is not resolved.

¹Through an error of the document preparer, this debt is described as a secured claim in the bankruptcy petition. Since the creditor repossessed the property, any remaining money owed is actually an unsecured debt under the Bankruptcy Code and is subject to discharge. (See Government Exhibit 8 at 2.)

1.h. Applicant admits that she was indebted to a creditor for the remainder of an automobile loan in the amount of \$12,001. This debt was included in Applicant's bankruptcy petition.² (Applicant Exhibit B at 33.) This debt is resolved.

1.i. Applicant admits that she was indebted to a creditor for a past-due debt in the amount of \$1,344. This debt was included in Applicant's bankruptcy petition. (Applicant Exhibit B at 37.) This debt is resolved.

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has made false statements to the Department of Defense during the clearance screening process. Applicant admitted that she had false answers on her questionnaire, but denied there was an intent to deceive the Government.

Regarding her finances, Applicant stated that within the seven years prior to filling out the questionnaire she had not had any possessions repossessed; defaulted on any loans; bills turned over to a collection agency; and had not had any credit card suspended, charged off, or cancelled for failing to pay as agreed. In addition, she also stated that she had not been over 180 days delinquent on any debts within the seven years prior to filling out the questionnaire. Finally, she also stated that at the time she filled out the questionnaire she was not currently 120 days delinquent on any debt. (Government Exhibit 4 at question 26.) These answers were not true, as set forth in detail under Paragraph 1, above.

Applicant stated that she did not intend to mislead the Government in regards to her answers on the questionnaire. Rather, she testified, "That was a mistake. It was a mistake because I do have - - I did have credit. It was a mistake." (Tr. 48, 53-55.)

As stated, the questionnaire was signed by Applicant on September 9, 2013. She was interviewed by an investigator for OPM on October 2, 2013. In his written report concerning this interview the agent states:

The Subject [Applicant] failed to provide the above mentioned creditors on her case papers as the subject was under the impression that after 4 years the debt would become deleted from her credit report in which the Subject did not need to report accounts on case papers. (Government Exhibit 6 at 3.)

²Through an error of the document preparer, this debt is described as a secured claim in the bankruptcy petition. Since the creditor repossessed the property, any remaining money owed is actually an unsecured debt under the Bankruptcy Code and is subject to discharge. (See Government Exhibit 8 at 2.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant had over \$24,000 in past-due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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) states that the disqualifying conditions may be mitigated where “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(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Applicant’s financial difficulties were caused by her then-fiancé walking away from a car he bought with her help, leaving her with the debt. In addition, a drop in her work hours left it impossible for her to keep up with the car debt, as well as her other indebtedness. She decided to file for Chapter 7 bankruptcy relief, and successfully did so. One of the debts in the SOR was not described by name in the bankruptcy petition. That omission, however, is insufficient to overcome the fact that she has received an appropriate discharge.

Applicant received the financial counseling required by the bankruptcy court. In addition, her discharge cleans the slate and she evinces a credible intent and ability not

to have financial difficulties going into the future. Accordingly, “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,” as is required by AG ¶ 20(c). Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The following mitigating conditions under AG ¶ 17 apply to the facts of this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.

There is no question that Applicant’s answers to question 26 on the e-QIP were wrong. However, they were not intentionally false. Less than one month later, when interviewed by a Government investigator, Applicant freely discussed her bad debts.

Three other points on this topic. First, Applicant did not fill out the questionnaire herself. She was asked questions by an employee of her employer’s security department, who then filled out the form. (Tr. 53-54.) Second, Applicant had filled out a prior questionnaire in 2002. (Government Exhibit 1.) Questions 38 and 39 of that questionnaire show Applicant informing the Government that she had debts, which were either currently 90 days delinquent, or had been 180 days delinquent within the past seven years. Finally, Applicant’s testimony showed her to occasionally have difficulty comprehending some questions. She was very nervous during her hearing, and there is

no telling how her nervousness may have manifested itself during prior interviews. Under the particular circumstances of this case, there is insufficient evidence to show that Applicant intentionally falsified her questionnaire in an attempt to deceive the Government. Paragraph 2 is found for Applicant.

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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which have now been resolved. She now has the tools to avoid such problems in the future. Applicant's conduct with regards to her finances was mitigated. Applicant also showed that the omission of relevant and material information from her e-QIP was accidental and not intentional.

Given her successful filing for bankruptcy, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation, and alleged personal conduct. Accordingly, the evidence supports granting her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	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.

WILFORD H. ROSS
Administrative Judge