



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



In the matter of:)
)
 -----) ISCR Case No. 14-00116
)
 Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated March 17, 2014, detailing security concerns under Guideline F (Financial Considerations). 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 DOD on September 1, 2006.

In an April 9, 2014, response to the SOR, Applicant denied five of the eight allegations raised, and noted she was awaiting validation concerning the remaining allegations asserted. She also requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The case was assigned to me on May 5, 2014. DOHA issued a notice of hearing on May 8, 2014, setting the hearing for May 29, 2014.

The hearing was convened as scheduled. The Government offered five documents, which were accepted as Exhibits (GX) 1-5 without objection. The Government noted that Applicant's previously submitted materials mitigated the concerns related to SOR allegations 1.a, 1.e, and 1.f; consequently, those allegations were found in Applicant's favor. Applicant offered testimony and 14 documents, which were accepted without objection as Exhibits (AX) A-N. She was given until June 9, 2014, to submit any additional materials. On June 3, 2013, Applicant forwarded six additional documents, which were accepted into the record without objection as AXs. O-T. On June 9, 2014, the transcript (Tr.) of the proceeding was received and the record was closed. Based on my review of the testimony and materials, I find that Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 43-year-old office administrator who has worked at her present place of employment since 2009, where she transitioned from a temporary to a permanent employee in late 2012. She has a bachelor's degree in business administration. Applicant has been legally separated from her husband for many years. As a working mother without spousal support, she raised a daughter who recently graduated from college with distinction. The SOR cites eight delinquent accounts amounting to approximately \$13,000 in delinquent debt.

In the summer of 2007, Applicant's daughter began experiencing serious headaches and other symptoms initially indicating a sinus infection. A pharmacist advised she try an over-the-counter medication, which she did without success. Being new to the area, they had no established general practitioner upon whom they could rely. A few days later, the 13-year-old child was taken to the emergency room because she could not breathe. The hospital determined she had a sinus infection and discharged the girl. Her health continued to decline and Applicant took her daughter to the hospital, where the child was diagnosed as having tonsillitis. As the school year approached, the matter remained unresolved and the symptoms worsened. By the time the child had lost 50 pounds and was back in the hospital, Applicant was desperate. She insisted that her daughter be given a CT scan. The physicians reluctantly complied with her demand.

The CT scan showed that Applicant's daughter had lesions on her brain. The child was immediately airlifted to a major children's hospital. By the time she arrived at the hospital, the child was in a coma. Surgery was deemed to be an immediate necessity, but complications were present due to vein blockages and the need for a blood thinner. Brain surgery was ultimately performed, followed shortly thereafter by a procedure on the child's neck. For the next two years, Applicant would personally care for and home school her daughter during her treatment and recovery. Consequently, Applicant switched to temporary work for a period, then was unemployed for a year while she provided needed care for her child.

During the early months of her daughter's ordeal, Applicant made payments on two credit account balances (SOR allegations 1.c and 1.g). that had been acquired when Applicant tried to help a friend in dire financial need. They amounted to about \$10,000 and represent the vast majority of the debt at issue. The friend failed to repay Applicant for the loans as contemplated. This created an unexpected financial burden that coincided with Applicant's need to miss work, care for her daughter, and attend to the child's medical and emotional needs. Applicant contacted all of her creditors and informed them of her situation. Most were not interested in working with her during her time of financial distress.

Applicant became short on income due to her daughter's illness and her own periods of underemployment and one year of unemployment necessitated by her need to care for the child. (Tr. 42-43) She addressed her debts as best she could and expressed willingness to make monthly payments on any outstanding debts to her creditors. She was making regular payments on the debt noted at SOR allegation 1.g, the second largest debt cited. Upon satisfaction of that debt of about \$2,700, however, the bank chose to impose a garnishment through her employer, citing additional sums owed due to interest. Applicant provided it with a receipt accounting that she had paid off her debt in full, and the bank accepted her evidence. (Tr. 24-25) This debt has been satisfied since at least November 2013.

Next, Applicant addressed the largest debt at issue in the SOR, noted at allegation 1.c for \$7,203. The underlying debt balance before interest and fees was for about \$1,000. Applicant satisfied her remaining balance on that debt through \$50 monthly payments. Once she began making those payments, however, the bank took her to court, claiming she owed it \$7,000. (Tr. 26) Applicant provided evidence of her payments and showing that the proper balance was \$1,000. (Tr. 26) Her attorney provided the court with her evidence, and the bank's collection entity failed to provide any evidence substantiating its claim for a higher amount. The suit resulted in a non-suit, thus squelching the collection entity's effort to obtain more money than was owed. (Tr. 28-29; AX.O)

As noted before the hearing, Applicant earlier provided evidence showing that the SOR allegations at 1.a, 1.e, and 1.f were mitigated in Applicant's favor; the debts noted at 1.c and 1.g are discussed above. The final debts at issue in the SOR are 1.b, 1.d, and 1.h, which are medical collection accounts for \$177, \$800, and \$270. (See Tr. 53-54) Applicant and her daughter have had health insurance throughout the period at issue. Applicant does not recognize these medical collection efforts, nor has she been able to determine their origin. She has formally disputed their entry on her credit report with Equifax in the hopes of identifying the accounts (AXs. R-T). Should they be shown to be hers and legally owed, it is her intent to satisfy them immediately. (Tr. 55-56)

Applicant's current finances are sound and she has the ability to address these debts if needed. She is current on all of her expenses and obligations. Applicant maintains a savings account and a 401(k) retirement account. Her daughter is soon to leave home for graduate school on an impressive scholarship. Applicant is a valued

employee at work. A superior wrote that Applicant is an exceptional communicator who has a good work ethic, is discrete, and self-motivated. (AX Q; see *also* AXs D-I)

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, which are 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, these guidelines are applied 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. Likewise, I have not drawn 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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.

Section 7 of Executive Order 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had acquired several delinquent debts amounting to approximately \$13,000. This is sufficient to raise two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

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 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.

Applicant's generosity was abused when the friend to whom she loaned about \$10,000 failed to repay her for a loan Applicant made with funds drawn on her credit cards. While neither Applicant's daughter's illness or the unreliable friend were the

direct cause of these debts becoming delinquent, Applicant's periods of underemployment and unemployment necessitated by her daughter's care are. The remaining debts have already been addressed or are in dispute because Applicant, who has had health insurance coverage, cannot identify the alleged medical accounts. Regardless, before the hearing, Applicant provided sufficient evidence to satisfy the Government with regard to SOR allegations 1.a, 1.e, and 1.f. At the hearing, she credibly questioned and disputed the debts cited at SOR 1.b, 1.d, and 1.h. Evidence of her correspondence with Equifax concerning this approximately \$1,250 of alleged debt, was timely received after the hearing. That leaves the approximately \$10,000 at issue in SOR allegations 1.c and 1.g, which Applicant demonstrated had previously been satisfied. Consequently, significant progress has been timely made.

While Applicant did not receive specific financial counseling, she does have a bachelor's degree in business. This apparently helped her live within her means despite a protracted period of financial distress and unemployment. It also gave her the savvy to try to work with her creditors when her daughter's illness began to adversely impact her career. This is to her credit. Moreover, should Applicant be ultimately determined to owe any or all of the \$1,250 in disputed accounts, she has both the savings and motivation to resolve them as soon as possible. I find that mitigating conditions ¶ 20(a), (b), (c), (d), and (e) 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). 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 the 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.

Applicant is a mature and well-educated woman with a background in business and management. As a single mother, she raised a highly successful young woman who is about to begin graduate school. She did so with no help from her estranged husband, who similarly failed to assist her when her daughter was in poor health. When that time came, Applicant found the personal fortitude and financial savvy to endure a period of underemployment and a year of unemployment while she cared for and educated her healing daughter. Given the circumstances, she came through the protracted crisis in good shape. A bad loan she extended has been paid off by Applicant and some minor debts have been satisfied. Only is about \$1,250 remains in earnestly disputed debts, which she will honor if they are shown to be hers.

Today, Applicant continues to live within her means. She maintains a savings and checking account, as well as a retirement account. Her business school background continues to help her at work and in her personal life. She is a valued employee. Her daughter is soon to leave home for graduate school on a scholarship. There is no reason to suspect Applicant will ever again have any financial issues warranting security concerns. I find that Applicant mitigated financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant 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.h: 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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge