



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



In the matter of:)
)
) ISCR Case No. 14-02722
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: [Applicant's Son], Personal Representative

01/14/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 13, 2014, and requested a hearing before an administrative judge. The case was assigned to me on August 14, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2015, scheduling the hearing for September 17, 2015. The hearing was convened

as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on September 25, 2015.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. She has worked for her current employer since August 2013. She is applying for a security clearance for the first time. She was born in another country. She came to the United States in 1971, and she became a U.S. citizen in 1982. She is a high school graduate. She is married with two adult children. She and her husband are estranged but live in the same home for financial reasons.¹

Applicant's husband developed significant health problems in about 2005. He did not have health insurance, and there were large medical expenses related to surgeries and other procedures. He has been unable to work since 2007. He did not start receiving Social Security disability benefits until 2009. Applicant had periods of unemployment and underemployment. When she worked, it was usually as a janitor or housekeeper. She and her husband struggled to pay their bills and relied upon credit cards. They were unable to keep up the payments, and a number of debts became delinquent.²

The SOR alleges 16 delinquent debts, but the \$270 debt alleged SOR ¶ 1.j is a duplicate account. The remaining 15 delinquent debts total about \$10,965. Applicant admitted owing all but three of the debts, which she denied because the debts were "removed" from her credit report. All the debts are listed on a credit report obtained in December 2013.

Applicant's finances have improved since she obtained her current job. She retained a credit repair company in October 2014. She is able to pay her current debts without incurring new delinquent debts, but she has not been able to address her delinquent debts. None of the debts alleged in the SOR are listed on her September 2015 combined credit report, as all or almost all of them are beyond the seven-year limit for reporting derogatory matter. Her plan is to proceed forward, pay her current bills, and maintain her financial stability.³

Applicant submitted a Questionnaire for National Security Positions (SF 86) in November 2013. She did not list any delinquent debts under the financial questions. She credibly denied intentionally falsifying the SF 86. English is her second language, and she did not understand all the questions. She was forthcoming about her finances

¹ Tr. at 20, 23-26; GE 1.

² Tr. at 18-21; Applicant's Response to SOR; GE 1-3; AE B.

³ Tr. at 19-21, 24-26; Applicant's Response to SOR; GE 3; AE A, D.

when she was interviewed for her background investigation in January 2014.⁴ Having considered all the evidence, I find that she did not intentionally falsify the SF 86.

Applicant submitted letters attesting to her excellent job performance, reliability, responsibility, work ethic, trustworthiness, and dependability.⁵

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 to be 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, administrative judges apply the guidelines 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."

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." The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

⁴ Tr. at 17, 22-23; Applicant's Response to SOR; GE 1, 3.

⁵ AE C.

Section 7 of EO 10865 provides that adverse 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

The security concern 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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that she was unable to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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;
- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's finances were related to her husband's medical problems that involved expensive medical procedures and left him unable to work since 2007. He did not start receiving Social Security disability benefits until 2009. Applicant had periods of unemployment and underemployment. Those events were beyond her control.

Applicant's finances have improved since she obtained her current job in August 2013. She is able to pay her current debts without incurring new delinquent debts, but she has not been able to address her delinquent debts. None of the debts alleged in the SOR are listed on her September 2015 combined credit report, as all or almost all of them are beyond the seven-year limit for reporting derogatory matter. Her plan is to proceed forward, pay her current bills, and maintain her financial stability.

Relying on debts falling off a credit report because they are more than seven years old generally provides minimal mitigation and does not constitute a good-faith effort to pay debts. However, Applicant was presented with significant setbacks and little options for addressing her financial problems. She chose to move forward and pay her current bills. She finally has a job where she is appreciated and she earns a salary that enables her to pay her day-to-day living expenses.

Under the unique circumstances of this case, I find that Applicant acted responsibly. There are clear indications that her financial problems are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) are applicable. AG ¶ 20(d) is not applicable. AG ¶ 20(a) is only partially applicable because Applicant did not actually pay her debts.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

Applicant did not intentionally provide false information on her SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded 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 relevant circumstances. The administrative judge should 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.

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 Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns and mitigated the 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.p:	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.

Edward W. Loughran
Administrative Judge