



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



In the matter of:)	
)	
)	ADP Case No. 14-02707
)	
Applicant for Security Clearance)	

Appearances

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

06/30/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for a trustworthiness determination is granted.

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on February 26, 2013 and certified it on February 26, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF), issued Applicant a Statement of Reasons (SOR) on August 25, 2014, detailing trustworthiness concerns under Guideline F, financial considerations. The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); DOD Regulation 5200.6, Personnel Security Program, dated January 1987, as amended and modified (Regulation); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on September 5, 2014, and she submitted an undated answer. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on February 7, 2015, and I received the case assignment on February 23, 2015. DOHA issued a Notice of Hearing on March 4, 2015, and I convened the hearing as scheduled on March 25, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 7, which were received and admitted into evidence without objection. Applicant testified. She submitted exhibits (AE) marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on April 3, 2015. I held the record open until April 27, 2015, for Applicant to submit additional matters. Applicant timely requested an extension of time to submit post-hearing documentation. By Order dated April 22, 2015, I extended the date for Applicant to submit additional documentation until May 22, 2015. Applicant submitted AE F - AE J. Department Counsel objected to the admission of AG G, her budget, as not timely submitted. As this is a relevant document, the objection is overruled. The record closed on June 4, 2015, the date Applicant's last submission was received.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 12.)

Motions

At the hearing, Department Counsel moved to amend the SOR to add allegations 1.g through 1.j and to change the date in allegation 1.a from July 2007 to December 2009. Applicant had previously reviewed the amended SOR and did not object to the proposed amendments. The motion was granted. SOR allegation 1.a is corrected, and allegations 1.g to 1.j are included as part of the SOR. (Tr. 10-11)

Findings of Fact

In her answers to the SOR, Applicant admitted the factual allegations in ¶¶ 1.d, 1.h, 1.i, and 1.j. of the SOR. Applicant's admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.a-1.c and 1.e-1.g of the SOR.¹ She

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection

also provided additional information to support her request for eligibility for a trustworthiness determination. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 51 years old, works as a referral coordinator for a DOD contractor. She began her current position in March 2013. Applicant was unemployed from October 2008 to October 2010 and from June 2011 to February 2013. Between October 2010 and June 2011, she worked two mornings a month at a bible church. Applicant worked from November 2007 until October 2008, when she stopped working for health reasons. Prior to November 2007, Applicant stayed at home to care for her children.²

Applicant received a general educational development diploma (GED) and a word processing certificate. She has attended college, but did not graduate. Applicant married her first husband in 1989, and they divorced in 1991. She married her second husband in 1992, and they divorced in 2014. Applicant has two daughters, ages 34 and 26, and a son, age 20. Applicant's 26-year-old daughter, her daughter's fiancé, and their 7-month-old daughter live with Applicant. Applicant's granddaughter suffers from a serious seizure disorder, making it impossible for Applicant's daughter to work. Her daughter's fiancé recently found work as a roofer.³

At the time Applicant and her second husband married in 1992, they lived in State A. Applicant's second husband worked in the housing industry and rose to the position of vice-president at his company. In November 2005, the family moved to State B because her second husband obtained a new position. One year later, in December 2006, when the housing industry began to unravel, he lost his job. Sometime later, he obtained another position. He was laid off from this job after a few months. Applicant's second husband obtained a permanent position in State A in August 2010.⁴

During her husband's unemployment, Applicant returned to work in November 2007. She developed problems with severe depression, which necessitated her departure from her job in October 2008 and prevented her from working for a long time. She and her son remained in State B while he completed his sophomore year of high school and while determining if her second husband's job would remain stable. She and her son returned to State A in July 2011. She continues to reside in State A.⁵

between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²GE 1; Tr. 22-23, 27.

³GE 1; AE A; Tr. 22, 38-39.

⁴Answer to SOR; Tr. 23, 38-39.

⁵Answer to SOR; Tr. 23-25.

Applicant submitted a copy of her earnings statements between January 30, 2015 and April 10, 2015. These statements reflect that her current gross biweekly salary is \$1,468 plus overtime. Applicant's overtime hours vary each pay period. Based on her earnings statements, her gross monthly pay is \$2,736 plus overtime pay of varying amounts. Applicant's budget indicates a net pay of \$2,400 month plus \$1,300 a month in alimony, and \$800 month in rent from her daughter's fiancé, for a total household income of approximately \$4,500. The rental income started after the hearing.⁶

Applicant moved to new residence after the hearing to reduce her housing costs. Her budget reflects that her monthly housing expenses include \$1,375 for rent and \$666 for utilities, cable, cell phone, internet, and waste removal. Her car payment plus related expenses averages \$556 a month. She spends approximately \$500 a month on food, \$165 on pet food, grooming, and treats, \$25 on home insurance, \$80 on personal care, and \$27 on entertainment. She listed five monthly loan payments totaling \$197, including \$15 a month for her education loan, and an additional \$150 a month for taxes. Her month expenses total \$3,741. With the rental income, she has a remainder of approximately \$759 month for debt payment.⁷

During their marriage, Applicant's second husband managed the household finances. Throughout their marriage, she did not involve herself in the household finances and remained unaware of how her second husband was managing their income and expenses. When her husband returned to State A in 2010, he worked as an independent subcontractor for sometime. He did not properly withhold taxes from his earnings, and he did not pay the required taxes when he filed their income tax returns. Her second husband's actions created tax issues for them for the tax years 2008, 2010, and 2011. Applicant declined to file joint tax returns with her husband in 2012 and 2013. In the divorce decree and over her husband's objections, the court supported her right not to jointly file tax returns in these years.⁸

SOR allegations 1.a, as amended, 1.c, and 1.g concern federal tax liens listed in the credit reports dated March 5, 2013, March 17, 2014, and February 4, 2015. SOR allegation 1.a is for a tax lien filed by the Internal Revenue Service (IRS) in December 2009 in the amount of \$12,285. Applicant provided a copy of the IRS tax transcript for the tax year 2008, which reflected that Applicant and her second husband requested an extension of time to file their 2008 federal income tax returns; that they filed the return on June 4, 2009; that the IRS processed the return on July 6, 2009; that the tax period was blocked from automatic levy; that in 2012, the IRS considered the past due taxes uncollectable; that in November 2013, the IRS established an installment agreement, and that as of March 24, 2015, the balance on this tax debt was \$3,907.⁹

⁶AE F; AE G; Tr. 38-39.

⁷AE G.

⁸AE A; Tr. 29-34.

⁹GE 5 - GE 7; AE B; AE D; Tr. 28-30.

SOR allegation 1.c concerns a \$42,693 tax lien filed in July 2007. The credit reports of record show that the IRS released this lien in 2011. This debt is resolved. SOR allegation 1.g relates to a \$20,253 tax lien filed by the IRS in November 2013 for the tax year 2011. Applicant provided a copy of the IRS tax transcript for this tax year. The tax transcript showed that Applicant and her second husband requested an extension of time to file their federal income tax for this year; that the IRS gave them until October 2012 to file their income tax return; that the IRS received their income tax return on October 3, 2012; and that the IRS processed and filed their income tax return on November 12, 2012. The tax transcript reflected that the IRS established an installment agreement in November 2014. The transcript indicated that Applicant and her second husband owed \$20,295 in taxes, of which \$12,555 was for self-employment taxes (social security and medicare) not paid by her second husband. When interest and penalties are included, the total amount of taxes owed is \$25,004.¹⁰

While not listed in the SOR, Applicant provided an IRS tax transcript for the tax year 2010. The tax transcript showed that Applicant and her second husband timely filed their income tax return; that they owed taxes; that the IRS established an installment agreement in November 2014; and that the IRS placed a lien in January 2015. The tax transcripts showed a total income tax of \$5,661, of which \$3,214 is self employment tax, plus penalties and interest for a total debt of \$6,691. Applicant provided a document showing the total tax debt owed for the tax years 2008, 2010, and 2011 that is being paid by her second husband as \$35,694.¹¹

When Applicant and her second husband divorced in 2014, the court directed that he be solely responsible for the payment of the taxes owed from the marriage. The court incorporated this finding into the divorce decree and final orders. At the hearing, Applicant acknowledged that the IRS will ignore what the court said about her husband's sole responsibility for the tax debts. She understands that if he does not pay as agreed, her wages could be garnished for this debt. She has obtained the documents to file for innocent spouse relief. She had not filed this request as of the close of the record.¹²

After Applicant's second husband lost his job, their financial problems reached an unmanageable level. Applicant and her second husband filed for bankruptcy under Chapter 7 of the United States bankruptcy code on September 27, 2010. As required for bankruptcy, Applicant participated in a credit counseling program approved by the bankruptcy court, which she verified. The bankruptcy court discharged their debts on January 20, 2011. The debts discharged included the \$10,618 debt alleged in SOR ¶ 1.e, and the \$12,575 debt alleged in SOR ¶ 1.f.¹³

¹⁰GE 5 - GE 7; AE B; AE C; Tr. 29-32.

¹¹AE B; AE E; Tr. 29-30.

¹²AE A; Tr. 33-34.

¹³Answer to SOR ; GE 2 - GE 4; Tr. 12-15.

SOR allegation 1.b concerns a tax lien (\$3,769) filed by State B in December 2009. Applicant provided documentation from the revenue board of State B that shows her second husband paid this debt. SOR allegations 1.h (\$109) and 1.i (\$117) concern medical debts. Applicant advised that the one debt arose because of a dispute between her insurance company and her doctor's office. She expected workers' compensation to pay the other medical bill, but workers' compensation denied her claim. She acknowledges that these debts need to be paid, but she has not yet done so.¹⁴

The last SOR debt 1.j (\$2,479) relates to a student loan debt. The creditor garnished Applicant's pay beginning on January 30, 2015. The amount of the garnishment varied and appears to depend upon Applicant's earnings each pay period. The amount garnished for the next five pay periods averaged \$220 for a total garnishment of \$1,098. Applicant's April 10, 2015 earnings statement showed a garnishment of \$2.31 for this debt. From this significant reduction, an inference can be drawn that the garnishment has ceased. After her pay was garnished, Applicant contacted the creditor and reached an agreement to rehabilitate her student loan debt, Applicant is to pay the creditor \$15 a month for a period of time beginning April 15, 2015. She provided documentation showing that she made the May payment and did not owe for April. Applicant currently owes approximated \$1,400 on her student loan debt.¹⁵

Policies

Positions designated as ADP I and ADP II are classified as "sensitive positions." (See Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.) "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." (See Regulation ¶ C6.1.1.1.) The Deputy Under Secretary of Defense (Counterintelligence and Security) Memorandum, dated November 19, 2004, indicates trustworthiness adjudications will apply to cases forwarded to DOHA by the Defense Security Service and Office of Personnel Management. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. (See Regulation ¶ C8.2.1.)

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 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."

¹⁴GE 5 - GE 7; AE I; Tr. 34-35.

¹⁵AE G; AE J; Tr. 35-36.

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 [sensitive] 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Analysis

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant and her second husband incurred significant debt beginning in 2007. They ultimately filed for bankruptcy and many of their debts were discharged, but not their tax debts, which remain unpaid. AG ¶¶ 19(a) and 19(c) are applicable.¹⁶

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

(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 and her second husband's financial problems began when he lost his well-paying job at the beginning of the housing industry collapse in late 2006. He was unable to find work providing sufficient income to meet their household bills. She returned to work to help meet expenses, but severe depression caused her to stop working after a year. Applicant's second husband found steady employment about four years after he lost his job. Her second husband's job loss and her depression are circumstances beyond their control. They filed for Chapter 7 bankruptcy in September 2010, a reasonable means to resolve debts arising under their circumstances. Many of their debts were resolved in bankruptcy, but not their tax debts. AG ¶ 20(b) applies to SOR allegations 1.d, 1.e, and 1.f.

As part of the bankruptcy process, Applicant took a credit counseling course. She recently moved to reduce her rent, which decreased her monthly household expenses. Her daughter's fiancé is now working and contributing to monthly household expenses. As a result, Applicant has sufficient income each month to pay her customary living expenses. The state court determined that her second husband was solely responsible for the past-due taxes, not Applicant. While the IRS does not accept this determination, the court's ruling is reasonable because much of the actual tax debt owed relates to her second husband's failure to file self-employment taxes (his social security and medicare payroll taxes), not to taxes owed on income earned. Her second husband has paid the tax debt owed to State B, and he has established a payment plan for the federal taxes owed. Through his payment plan, he has reduced the tax debt for

¹⁶AG ¶ 20(g) "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," does not apply as Applicant and her second husband filed their federal income tax returns within the legal time requirements.

the tax year 2008. The creditor for Applicant's education loan garnished her wages, which resulted in a reduction of her debt. AG ¶ 20(c) applies as there are clear indications that debts are being resolved, and her finances are under control.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The downturn in the economy beginning in 2006 created a serious financial crisis for Applicant and her second husband which lasted many years because her second husband was either unemployed or underemployed for four years, and Applicant was unable to maintain employment because of serious depression. They used bankruptcy as a means to return to financial stability. Under these circumstances, their decision to file for bankruptcy protection was reasonable. They resolved many debts, but not the tax debt problem created by the poor decisions of Applicant's second husband, not Applicant. Her second husband was self-employed and did not file his self-employment taxes, as required, nor did he pay all the income taxes owed. He finally began to take responsibility for these taxes, after the state family court found him solely responsible for this debt. The tax debt is his, not Applicant's under their divorce decree, even though the IRS will not comply with this determination. To further protect herself, Applicant is

filing for innocent spouse relief as the tax debt is the result of the actions of her second husband. She owes two small debts, which cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a position of trust. In reviewing all the facts and evidence in this case, the remaining unpaid debts are insufficient to raise security concerns.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a trustworthiness determination. For all these reasons, I conclude Applicant mitigated the trustworthiness concerns arising from her finances under Guideline F.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interest of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is granted.

MARY E. HENRY
Administrative Judge