



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



In the matter of:)	
)	
)	ISCR Case No. 14-00704
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Eligibility for access to classified information is granted.

Statement of the Case

On March 14, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order (EO) 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.

Applicant answered the SOR on May 7, 2014, and elected to have her case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on July 18, 2014. The FORM was mailed to Applicant who

received it on August 4, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted exhibits (AE) A through D. All exhibits were admitted into the record without objection. The case was assigned to me on October 1, 2014.

Findings of Fact

In Applicant's answer to the SOR, she denied both allegations. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 52 years old. She is married and has four children, including two stepchildren. She has worked for her current employer, a defense contractor, since June 2003. She has a bachelor's degree. Because of an ongoing medical condition, she has been drawing short-term disability benefits since June 2013. Her husband has been unemployed since February 2013 and is drawing benefits from that status. She has no previous military experience, but she has held a security clearance since 1983 with no apparent incidents.¹

The SOR lists two delinquent debts including a charged-off bank loan in the amount of approximately \$33,447 (SOR ¶ 1.a) and federal income tax debt for tax years 2006 and 2007 in the amount of approximately \$5,615 (SOR ¶ 1.b). The bank debt is supported by a credit report from March 2014.²

Applicant purchased a home in July 2006. She financed the purchase with a first mortgage of about \$208,000 and a second mortgage of about \$37,000, both with the same bank. A successor bank acquired both mortgages in 2007. In November 2007, her first loan went into foreclosure status. She made her mortgage loan current by using funds from her 401(k). In 2010, she began negotiating a loan modification with her mortgage holder. She was able to secure the loan modification, and as a result she believed her two original mortgages were rolled into one single mortgage, which resulted in her new mortgage balance of approximately \$245,000. Her current mortgage balance is \$237,220 and she is current on her payments.³

In November 2012, Applicant became aware that her original second mortgage loan was listed as a "charged-off" account on her credit report. She could not understand this entry because this loan had been rolled over into her subsequent mortgage modification. She disputed the item on her credit report. She contacted her bank before the issuance of the SOR, but the bank maintained that the information it provided to the credit reporting services was accurate. She was never made aware of

¹ Items 4-5.

² Items 1, 5-7.

³ Item 4, 6-7; AE A.

this debt and received no billing statements. This debt is the subject of the allegation stated in SOR ¶ 1.a. Applicant explained that she misplaced the loan modification documents, but provided two emails from December 2010 that discussed the modification issue.⁴

In February 2013, Applicant proposed a payment plan to pay her 2006 and 2007 federal tax debt in the amount of \$5,615. She then provided documentary evidence showing she has paid the debt for both tax years in May 2013. The federal tax debt is resolved (SOR ¶ 1.b).⁵

Applicant's last two job appraisals rated her with a score of 3.48 out of a possible 5.0. She is viewed as a valuable contributor by her employer. She is also the recipient of several team awards and individual commendation awards for outstanding performance.⁶

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.

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

⁴ Item 4, 6; AE B.

⁵ Items 4, 6.

⁶ AE C-D.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant had delinquent tax debts and an issue with a second mortgage. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

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

(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 resolved her federal tax debts and is current on her modified mortgage payments. AG ¶ 20(d) applies. The record contains sufficient evidence supporting Applicant's claim that the second mortgage was rolled into the first mortgage when the loan was modified. Even without the mortgage loan modification documentation, I make reasonable inferences from the Applicant's statements, the loan balance listed in the credit report, and her email correspondence with the bank to so conclude. AG ¶ 20(e) applies.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There is also no requirement that an applicant pay every debt listed in the SOR, only that he remove concerns about his reliability and trustworthiness raised by those debts. See ISCR Case No. 14-00504 at 3 (App. Bd. August 4, 2014). Applicant has taken significant action to implement the plan to resolve her debts.

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 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 guideline 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 considered Applicant's work performance and outstanding contributions to her job. I also considered her current disability and her husband's period of unemployment. The evidence supports that she is on track toward financial stability. She paid her federal tax debt and modified her mortgage. The record contains sufficient evidence to mitigate the security concerns.

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 mitigated the security concerns arising under Guideline F, financial considerations.

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.b:	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.

Robert E. Coacher
Administrative Judge