



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



In the matter of:)
)
) ISCR Case No. 14-01647
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

05/27/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s sole delinquent debt, totaling approximately \$68,000, stems from a loan she cosigned with her parents to open a restaurant in 2006. In 2008, the restaurant failed and they defaulted on the loan. Applicant initially thought that the loan had been resolved as part of several issues related to the dissolution of the business, but later discovered that it was still outstanding, having been transferred to an unknown creditor. After four years of exhaustive research, Applicant, with the help of an attorney, tracked down the creditor and negotiated a payment plan. In the six months since she identified the creditor, she has, consistent with a payment plan, paid \$10,000 towards the resolution of the debt and is on schedule to satisfy the debt over the next 30 months, as agreed. Applicant has mitigated the security concern. Clearance is granted.

Statement of the Case

On October 15, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006.

On December 2, 2014, Applicant answered the SOR, admitting the allegation and requested a hearing, whereupon the case was assigned to me on March 20, 2015. DOHA issued a notice of hearing on April 1, 2015; scheduling the hearing for April 24, 2015. The hearing was held as scheduled. At the hearing, I received three Government exhibits (GE 1 through GE 3), 19 Applicant exhibits (AE A through AE S), together with the testimony of Applicant. DOHA received the transcript (Tr.) on May 6, 2015.

Findings of Fact

Applicant is a 35-year-old single woman. She earned both an undergraduate and a master's degree in information systems in 2002 and 2012, respectively. (Tr. 27) Since 2013, she has worked for a government contractor as an enterprise architect. Her duties include assessing her client agency's information-sharing and collaboration web-based platforms with the goal of enhancing its ability to share information with other agencies in a timely and streamlined manner. (AE M; Tr. 29) She has held a security clearance since 2007. (Tr. 38)

Applicant is highly respected on the job. According to her senior-level supervisor, Applicant is a talented and accomplished performer with strong leadership skills who has "jumped at opportunities for growth" while at the company. (AE K) According to Applicant's employer's federal government client, she is the strongest and most valuable asset on the entire team. (AE L) The supervisor at her previous job characterizes her as an innovative individual who "constantly introduc[ed] new ideas and concepts" during her stint with the company. (AE N)

In 2006, Applicant and her parents opened a restaurant. (Tr. 38) They financed the business with a loan totaling \$54,787. The business was initially successful; however, it began struggling in 2008 after the national economy entered a recession. (Tr. 39) In 2010, Applicant and her parents, with the help of an attorney, sold the business. In the process, they transferred the lease and delegated some of their capital inventory loans to the buyer.(Tr. 39) Also, their attorney began negotiating an offer-in-compromise with the SOR creditor. The goal was to either reduce or eliminate the debt through exchanging their remaining high-value inventory as collateral. (Answer at 2)

In December 2010, Applicant's parents received a letter from the creditor stating that their credit line had been cancelled, they owed no money, and that the account was paid in full. (GE 3 at 104; Tr. 32, Tr. 40) Applicant and her parents assumed that their attorney had successfully negotiated an offer-in-compromise. (Tr. 41) In 2012, they discovered that the loan was still outstanding.(Tr. 42; GE 3 at 19) They then contacted the bank. It had no record of the debt. (Tr. 33) When they contacted their attorney for clarification, they discovered that he had died. (AE E)

In April 2013, Applicant and her parents retained another attorney. (Answer at 18) He was ineffective and unresponsive. (Tr. 43) In April 2014, Applicant became alarmed when she discovered that this outstanding delinquency might have a potentially derogatory effect on her security clearance. Consequently, she decided “to take matters in [her], own hands.” (Tr. 44) In October 2014, she discovered that the loan had been transferred to the U.S. Small Business Administration. (Tr. 45) In November 2014, Applicant negotiated a payment plan. (Tr. 47) Under the plan, Applicant agreed to pay the balance, totalling \$68,249¹ through an initial payment of \$5,000, followed by successive monthly \$1,800 payments over the following 36 months. (Tr. 35)

In the six months since Applicant executed the agreement, she has been making the payments, consistent with the plan. (AE B) Currently, she earns a net monthly salary of \$8,000, has \$10,000 in a savings account, and approximately \$100,000 invested in 401(k) accounts. (Tr. 48-49)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

¹This higher amount constitutes the original loan balance plus administrative fees of approximately \$15,000. (Tr. 47)

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." (AG ¶ 18) Applicant incurred a debt in excess of \$60,000 that was in delinquent status for two years between 2010 and 2012. AG ¶ 19(a), inability or unwillingness to satisfy debts," applies.

Applicant's debt related to a business failure. Although she made prudent efforts to resolve the debt, they were complicated by circumstances beyond her control such as the difficulty identifying the assignee of the debt, the death of the attorney whom she originally retained to help identify the assignee, and the ineffectiveness of the next attorney whom she retained after the first attorney's death. Once Applicant took matters into her own hands and identified the new creditor, she negotiated a payment plan, and has been making payments, as agreed, for the past six months. Given the length of time she has been complying with the plan and her ample discretionary income, I am confident that Applicant will continue to make payments without interruption consistent with the terms of the agreement. The following mitigating conditions apply:

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.

I conclude Applicant has mitigated the financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

My conclusion was based on the mitigating circumstances surrounding the accrual of the debt, the strong presence of rehabilitation, and the minimal likelihood of recurrence, together with Applicant's sterling work record.

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

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.

MARC E. CURRY
Administrative Judge