



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



In the matter of:)
)
) ISCR Case No. 14-01846
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has resolved all of the accounts alleged in the SOR. She and filed her state and federal tax returns before she submitted her November 2013 security clearance application.

Statement of the Case

On August 15, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing, convened on April 16, 2015, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through C, without objection. I received the transcript (Tr.) on April 27, 2015.

Findings of Fact

Applicant, 40, has worked as a customer service representative for a federal contractor since May 2012. On her security clearance application, submitted in November 2013, Applicant disclosed that she failed to file state taxes in 2008 and that she had at least three delinquent accounts. The ensuing investigation revealed that Applicant was indebted to five creditors for approximately \$13,000 and that she failed to file federal and state income taxes between 2008 and 2011.²

Applicant has been married for 22 years and has two children, ages 19 and 17 years old. In January 2007, Applicant and her husband separated, establishing separate residences in different states. At the time, Applicant was employed as a sales manager, earning \$100,000 annually. She was laid off in December 2008. After two months of unemployment, she secured another executive-level position paying \$90,000. Applicant was laid off again after four months and remained unemployed for the next 34 months. She supported her household with unemployment compensation and by depleting her \$15,000 retirement savings. During their separation, Applicant and her husband did not file federal or state income taxes. The couple could not figure out an equitable way to claim their dependent children. Neither wanted to do anything that would cause financial difficulty for the other. Applicant and her husband reconciled in 2010. They filed their outstanding federal and state federal income tax returns by May 2013.³

Applicant returned to full-time employment in 2012, accepting a significant decrease in pay. She now earns \$35,000 annually. Together, she and her husband have a household income of \$120,000. They are current on their recurring monthly bills. Applicant has been making payments toward a \$10,560 judgment (SOR ¶ 1.a) since May 2011.⁴ By the time of the hearing, the judgment had a remaining balance of \$321. Applicant has also paid the accounts alleged in SOR ¶¶ 1.b through 1.e. Currently, Applicant only has two consumer credit accounts with outstanding balances, one automobile loan and one credit card that she holds jointly with her husband. Both accounts are in good standing and have a positive payment history.⁵

² Tr. 16, GE 1-4.

³ Tr. 17-20, 25-27, 29-35, 39-40; GE 1; AE C.

⁴ The SOR mistakenly alleges that the creditor secured the judgment in August 2001. The correct date is August 2011.

⁵ Tr. 24-24, 27-28; AE A-B.

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." 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, 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.

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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁶ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant is indebted to five creditors for approximately \$13,000. The debts are substantiated by the record.⁷ Between 2008 and 2012, Applicant had an inability to pay her bills.⁸ Applicant also admits, as the SOR alleges, that she failed to file her federal and state income tax returns between 2008 and 2011.⁹ However, she has submitted sufficient information to mitigate the security concerns raised by her finances. Applicant does not have a history of financial problems. Her financial difficulty was limited to the period of time that she was unemployed and living separately from her husband. These issues do not reflect negatively on her current security worthiness. Applicant’s financial problems were caused by events beyond her control and she has acted responsibly to resolve them. She filed her outstanding federal and state income tax returns and started making payments on her largest debt, a \$10,000 judgment, before she submitted her November 2013 security clearance application. In paying off all of the delinquent accounts alleged in the SOR, Applicant has demonstrated a good-faith effort to repay her creditors. Her finances are under control and the security concerns regarding her finances have been mitigated.¹⁰

I have no doubts about Applicant’s suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant’s period of financial problems is not indicative of financial irresponsibility, poor self-control, lack of judgment, or an unwillingness to follow rules and regulations.

⁶ AG ¶ 18.

⁷ GE 2-3.

⁸ AG ¶ 19(a).

⁹ AG ¶ 19(g).

¹⁰ AG ¶¶ 20(a)-(d).

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.g:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge