



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



In the matter of:)	
)	
)	ISCR Case No. 14-02003
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

May 22, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on February 21, 2013. On October 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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), effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on November 4, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on February 18, 2015. DOHA initially issued a notice of hearing setting this case for hearing on March 13, 2015. However, pursuant to Applicant's request, the case was continued to April 14, 2015, when I convened the hearing as so scheduled.

The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on her own behalf and submitted Exhibit (AppXs) A, which was received without objection. DOHA received the transcript of the hearing (TR) on April 22, 2015. I granted Applicant's request to keep the record open until May 14, 2015, to submit additional matters. On May 6 and May 11, 2015, respectively, she submitted AppXs B and C, which were received without objection. The record closed on May 14, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant denied the two factual allegations in the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant is a 48 year-old Facility Security Officer (FSO), who has held a security clearance without incident since the age of 18. (TR at page 19 line 3 to page 22 line 2.) Four years ago, her husband had heart surgery, which cost them about \$12,000. (TR at page 24 line 1 to page 25 line 19.) This caused her financial difficulties. (*Id.*) She has since addressed the alleged two past-due debts.

1.a. It is alleged that Applicant is indebted to Creditor A in the amount of about \$8,032. (GX 2 at page 8.) She is addressing this debt; and as of April 29, 2015, the debt has been reduced to "\$3,967," as evidenced by correspondence from Creditor A. (Answer, and AppX C.) I find that Applicant has made a good-faith effort to address this debt.

1.b. It is alleged that Applicant is indebted to Creditor B in the amount of about \$8,487. (GX 2 at page 9.) She has addressed this debt; and as of April 10, 2015, the "Past Due Amount [is] \$0.00," as evidenced by correspondence from Creditor B. (AppX A.) I find that Applicant has addressed this debt.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG

Paragraph 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. Paragraph 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 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 Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant has had difficulty meeting her financial obligations. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20 (b), it may be mitigating where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. loss of employment, . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.”* Applicant’s past-due indebtedness is directly attributed to her husband’s heart surgery. Under Subparagraph 20 (d), it may also be mitigating where *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has either paid, or has made a good-faith effort to resolve all of the alleged debts.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of Applicant’s conduct and all the circumstances. Under Paragraph 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 administrative judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Those who know Applicant in the workplace think she is trustworthy. (AppX B.) The record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from her Financial Considerations, under the whole-person concept.

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

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.

Richard A. Cefola
Administrative Judge