



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-02001 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2015

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 September 12, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF 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 September 29, 2014. She elected to have her case decided on the written record. Department Counsel submitted the Government's

File of Relevant Material (FORM) on April 9, 2015. The FORM was mailed to Applicant who received it on June 3, 2015. As evidence, the Government offered Items 1 through 5, which are admitted without objection. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted Item 6.1 through 6.6, which were admitted into the record without objection. The case was assigned to me on August 5, 2015.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations except for SOR ¶ 1.d, which she denied. Her admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 46 years old. She is single and has three children, ages 26, 24, and 15. She has worked for her current employer, a defense contractor, since June 1995. She is a high school graduate. She has no prior military service and has never held a security clearance.¹

The SOR lists seven collection debts and three tax debts for a total amount of approximately \$20,437. These debts are supported by credit reports from September 2013 and April 2015.²

In an interview with a defense investigator in September 2013, Applicant stated her financial difficulties began in approximately 2010 when she could not pay all of her debts because of her level of income. She decided not to pay her state taxes for 2010 and 2011, or her federal taxes for 2012. Since that time she established payment plans and paid both the delinquent state and federal taxes. She also has paid all the delinquent debts except for one, which she disputed. The status of the debts is as follows:³

SOR ¶¶ 1.a – 1.b (state tax debts \$4,018 and \$306):

Applicant presented documentation showing that she is making payments toward these two delinquent debts. Documentation shows that Applicant's federal tax refund was used to pay part of the state tax debt in April 2014 and March 2015. Additionally, proof of several monthly payments as recently as June 2015 was also established. Proof of payment of 2012 state taxes was also offered. These debts are being resolved.⁴

¹ Items 2, 3.

² Items 4-5.

³ Item 3.

⁴ Item 1, 6.1 – 6.4.

SOR ¶ 1.c (federal tax debt \$147):

Applicant provided documentation showing that this debt was paid through application of her 2013 tax refund. The account is resolved.⁵

SOR ¶ 1.d (medical debt \$2,895):

Applicant researched this debt and could not find a legitimate basis for it. She disputed this debt by filing a written dispute with the collection agency. The account is disputed.⁶

SOR ¶ 1.e (traffic ticket debt \$250):

Applicant provided documentation showing that this debt was paid in March 2014. The account is resolved.⁷

SOR ¶¶ 1.f – 1.i (medical debts \$125, \$24, \$20, \$17):

Applicant provided documentation showing that these debts were paid in September 2014. These accounts are resolved.⁸

SOR ¶ 1.j (repossession debt \$12,635):

Applicant provided documentation showing that she is making monthly payments toward this debt in the amount of \$150. The last proof of payment was in May 2015. The account is being resolved.⁹

Applicant went through a credit counseling program in 2014. No information is in the record about Applicant's current personal financial status.¹⁰

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

⁵ Item 1.

⁶ Item 1.

⁷ Item 1.

⁸ Item 1.

⁹ Item 1, 6.6.

¹⁰ Item 1.

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 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 accumulated delinquent debts over an extended period of time. 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:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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;
- (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 has resolved two tax debts, five collection debts and is resolving the one tax debt and one collection debt through regular payments. Her efforts to repair her financial position make it reasonable to conclude that these types of debts will not recur, and that they do not cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

Applicant failed to present evidence that any of the debts were caused by circumstances beyond her control. AG ¶ 20(b) does not apply.

Applicant received credit counseling and there are clear indications that the debts are resolved or under control. Applicant made good-faith efforts to resolve the debts listed on the SOR. She supplied documentary evidence showing the payments were made and the debts were either paid or are being paid. AG ¶ 20(c) and ¶ 20(d) apply.

Applicant presented written documentation showing that she disputed the debt listed in SOR ¶ 1.d. AG ¶ 20(e) partially 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 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 personal circumstances. The evidence supports her showing that she resolved or is resolving the debts. 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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a – 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge