



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



In the matter of:)	
)	
)	ISCR Case No. 14-02021
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*¹

02/23/2015

Decision

WHITE, David M., Administrative Judge:

Applicant incurred about \$7,000 of delinquent debts after having about \$5,700 in debt discharged through a 2008 bankruptcy. Since obtaining her current job, she has taken positive steps to resolve these delinquencies. Resulting security concerns were mitigated. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on October 18, 2013. On July 24, 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),

¹Ryan C. Nerney, Esq., represented Applicant in preparing her response to the Statement of Reasons, but he filed a Notice of Withdrawal on Nov. 18, 2014, and Applicant elected to represent herself at the hearing. See HE I; Tr. 6-7.

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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on September 11, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 24, 2014. The case was assigned to me on October 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on November 21, 2014, setting the hearing date for December 2, 2014.² I convened the hearing as scheduled, with Department Counsel participating from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. Applicant offered Exhibits (AE) A through C, which were admitted without objection, and testified on her own behalf. Two witnesses also testified for her. I granted Applicant's request to leave the record open until December 16, 2014, to permit submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on December 10, 2014. Applicant submitted no additional evidence and did not request additional time to do so. The record closed as scheduled.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor, where she has worked since August 2013. She is a high school graduate with one semester of college classes, who has no military service. She has never held a security clearance. She is unmarried, with no children. (GE 1; Tr. 8, 10, 22, 24, 50.)

Applicant's response to the SOR was prepared by an attorney, and formally denied each allegation but provided explanations admitting most of the essential facts alleged. (AR; Tr. 46-48.) Applicant's explanations are incorporated in the following findings.

Applicant filed for Chapter 7 bankruptcy relief in August 2008, with the assistance of a paralegal but without receiving advice of a licensed attorney. A used 1995 Mazda that she had purchased with a high-interest-rate loan broke down, and she could not afford to either repair it or continue making payments on the loan while also paying for a replacement vehicle. In this bankruptcy she successfully discharged about \$3,200 remaining on the Mazda car loan and about \$2,500 in other miscellaneous consumer debts. She reaffirmed the outstanding loan for about \$10,000 with which she had purchased the replacement used car that she needed to commute to her job at the time. (AR; Tr. 57-62.)

²Applicant confirmed that she received notice of the hearing at least 15 days in advance, and that she was ready to proceed without needing any additional time to prepare. She accepted an offer to keep the record open for two weeks after the hearing to permit submission of additional evidence. (Tr. 7, 102-103.)

Subsequently, Applicant experienced some periods of involuntary unemployment and part-time work before obtaining her current position in August 2013. During that time, she incurred the 17 delinquent consumer and medical debts alleged in the SOR, which total \$6,983.³ In November 2013 she filed for Chapter 13 bankruptcy protection and entered into a court-supervised plan to resolve her debts that the court confirmed in January 2014. All of her SOR-listed debts are included in this three-year repayment plan, which also includes other debts for a total of about \$13,000 that will be fully resolved in late 2016. Payments to the bankruptcy trustee have been regularly withdrawn and made from her gross pay by her employer since December 2013, and she remains compliant with the plan. (AR; AE A; AE B; Tr. 48-49, 52-56, 65-80.)

In addition to making the bankruptcy payments through regular payroll deductions, Applicant is current on her recurring living expenses. She has a monthly surplus of about \$700 as documented by her personal financial statement. (AR; Tr. 80-84.)

Applicant provided reference letters and testimony from coworkers, supervisors, friends, and family members. These people described her current maturity, responsibility, trustworthiness, reliability, and determination to avoid repeating the financial mistakes that she made in the past. (AR Exhibit A; AE C; Tr. 88-98.)

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

³The two \$291 collection accounts alleged in SOR ¶¶ 1.k and 1.l represent the same underlying debt owed to a cable company listed by successor collection agencies with different credit bureaus on different dates. See GE 2 @ 7, Tr. 78.

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant was financially unwise and immature in the past, which contributed to her two bankruptcy proceedings when she was unable to satisfy some debts. She discharged about \$5,700 in unsecured consumer debts under Chapter 7 in 2008. Subsequent periods of unemployment and part-time work also contributed to her current

SOR-listed delinquencies totaling about \$7,000. These facts provide substantial evidence under the foregoing DCs, thereby shifting the burden to Applicant to mitigate resulting security concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's financial problems arose prior to her current employment, in part due to her inattention to some aspects of her finances at the time. Since obtaining a steady income, she has taken reasonable steps to make consolidated court-monitored payments toward her valid debts through the ongoing Chapter 13 bankruptcy. She has become conscientious about managing her finances to prevent any recurrence. The evidence strongly suggests that financial issues are unlikely to recur and do not reflect adversely on Applicant's current reliability and judgment, thereby establishing mitigation under AG ¶ 20(a).

Applicant's recent delinquencies were caused in part by a period of unemployment and part-time work, and the relatively small amount of resulting debt provides some indication of responsible actions under the circumstances. However, Applicant admitted that the financial problems also arose from poor choices on her part, so mitigation under AG ¶ 20(b) is minimal.

Applicant has completed financial counseling in connection with her bankruptcies, and entered a court-monitored Chapter 13 plan under which she is resolving and repaying her outstanding debts within a manageable budget. She demonstrated improved financial management by avoiding new delinquencies since obtaining her present job, and has sufficient income to remain financially solvent. These facts establish substantial mitigation under AG ¶¶ 20(c) and (d).

“An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has ‘taken significant actions to implement that plan.’” ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has successfully established a meaningful track record of debt resolution that successfully continues to date.

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 relevant 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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, who has accepted accountability for her valid debts and taken substantial steps to resolve them. Her positive actions to address both the sources and results of her indebtedness have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of significant financial problems unlikely. Her debts of potential concern arose when she was less mature and experienced, and during times of unstable employment. Her current solvency and financial responsibility demonstrate permanent behavioral changes. People who know her well in personal and professional settings expressed positive opinions concerning her trustworthiness, responsibility, and reliability. Overall, the record evidence creates no doubt as to Applicant’s present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.t: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge