



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



In the matter of:)
)
) ISCR Case No. 14-02432
)
Applicant for Security Clearance)

Appearances

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

08/27/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. The Government offered insufficient evidence to meet the burden of proof for the Guideline E, personal conduct allegation. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On January 10, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 effective within the DOD for SORs issued after September 1, 2006.

On January 21, 2015, Applicant answered the SOR, and she elected to have her case decided on the written record in lieu of a hearing. She submitted documents with her Answer. On March 28, 2015, Department Counsel submitted the Government's file of relevant material (FORM), and it was mailed to Applicant. She received it on June 4, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did not object to any of the documents submitted by the Government, identified as Items 1 through 4, and they are admitted into evidence. She provided a response to the FORM and submitted additional documents. The Government had no objections and all of Applicant's documents are admitted into evidence. The case was assigned to me on July 31, 2015.

Findings of Fact

Applicant admitted all of the SOR allegations and noted several that were duplicates. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. She was married from 1991 to 1994, and again from 1999 to 2011. She does not have children. She served in the military from 1983 until she retired honorably in the paygrade E-6 in 2004. She has worked for different federal contractors since 2006, with a period of unemployment from February 2006 to June 2006. It appears she held a security clearance while in the military and while employed as a federal contractor.¹

Applicant began experiencing financial difficulties when her brother, with whom she shared a house and expenses, moved due to his job relocating to another state in 2010. She had relied on her brother's income to pay half of her mortgage and other household expenses. She attempted to make these payments and pay other expenses by herself for about two years. She began using credit cards to keep up with the expenses, and subsequently realized the costs were too much for her to handle alone. She decided to sell her home, which had a mortgage that was greater than the value of the house. She attempted to "short sale" the house to get herself back on track financially. She sold the home in August 2012.²

After the sale of her home, Applicant continued attempting to pay her bills and expenses, but soon acknowledged that she was unable to do so on her income. In August 2013, she contracted with a debt relief company (DRC) to help resolve her debts.³

¹ Item 3.

² Answer to SOR.

³ Answer to SOR. Applicant provided proof of the date she contracted with the DRC.

The SOR alleged 25 delinquent debts totaling more than \$87,000. SOR ¶ 1.i (\$3,460) alleges four debts that are separately alleged in ¶¶ 1.s (\$1,233), 1.u (\$948), 1.v (\$924), and 1.w (\$734). I find for Applicant on SOR ¶ 1.i and will address the debts in the individual paragraph allegations. SOR ¶¶ 1.n (\$3,606) and 1.o (\$3,606) are duplicates. I find for Applicant on SOR ¶ 1.n. SOR ¶¶ 1.a (\$5,423) and 1.y (\$5,423) are duplicates. I find for Applicant on SOR ¶ 1.y.⁴

Through the DRC, Applicant has paid or settled the following debts alleged in the SOR: ¶¶ 1.b through 1.h, 1.j, 1.p, 1.q, 1.s, 1.t, 1.w, and 1.x. She provided documents to support the resolution of these debts.⁵

SOR ¶ 1.k alleges two debts to the same creditor totaling \$40,012. Applicant disputed that there are two accounts and the amount alleged. She contacted the creditor to resolve the problem and was advised that when she previously reported her credit card stolen, the original account was never closed before she was sent a new credit card, even though the balance was transferred to the new card. The discrepancy is being resolved by the creditor. She does not dispute she has a delinquent debt with the creditor for one account. She was unable to include this debt in her DRC program and provided documents to show she is resolving it on her own. She made a payment of \$200 in August 2014, and since then has been making consistent monthly payments of \$500. She provided proof that she has paid \$4,700 and the current balance as of May 2015 is \$19,132.⁶

Applicant disputed the amount of the debt alleged in SOR ¶ 1.m (\$7,038). She provided a copy of her current account statement that shows the balance owed is \$3,948. Applicant provided proof that she has been making payments on the account since October 2014. Applicant is also making payments on the debt in SOR ¶ 1.u (\$948) and anticipated the debt would be resolved in October 2015.⁷

From the time she received the SOR to the time she received the FORM, Applicant resolved four additional alleged debts. Through the DRC, Applicant is still negotiating payment plans and settlements for the debts in SOR ¶¶ 1.a, 1.l, 1.r and 1.v.⁸

The Government alleges Applicant intentionally falsified her March 2013 security clearance application (SCA) because she did not disclose debts that were in collection, accounts suspended or charged off, and debts that were over 120 days delinquent. Applicant denied she falsified her SCA and stated that when she completed her SCA

⁴ Item 2; Response to FORM, with attachments.

⁵ Item 2; Response to FORM with attachments.

⁶ Item 2; Response to FORM, with attachments.

⁷ Item 2; Response to FORM, with attachments.

⁸ Response to FORM, with attachments.

she did not recall any of her accounts being over 120 days delinquent or in collection. No evidence was provided by the Government to contradict her assertion.⁹

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 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. 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, 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 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 that an applicant may deliberately or inadvertently fail to 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.

⁹ Item 2; Response to FORM, with attachments.

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 AG ¶ 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. I have considered the following under AG ¶ 19:

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

Applicant had 22 delinquent or past due debts that she was unwilling or unable to pay from 2013. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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 is still resolving or paying some of her delinquent debts. Therefore, AG ¶ 20(a) does not apply. She experienced financial difficulties when her brother, who had been sharing the household expenses, moved to a new state. Her house was valued at less than her mortgage due to the economic downturn. She was unable to make her mortgage payments based on her income alone. These were conditions beyond her control. For the full application of AG ¶ 20(b), there must be evidence that Applicant acted responsibly under the circumstances. When Applicant realized she needed help in resolving her financial problems, she sold her house through a short sale. She also contracted with a DRC in August 2013 to address her debts, and has been systematically resolving them. She provided proof of her good-faith actions and continuing conduct to resolve her financial obligations. There are clear indications that her financial problems are under control. AG ¶¶ 20(c) and 20(d) apply.

Applicant disputed certain debts alleged as duplicates or the amount owed. She provided sufficient documented proof to substantiate the basis of the dispute and evidence of actions she has taken to resolve those issues. AG ¶ 20(e) applies.

Guideline E, Personal Conduct

AG ¶ 15 sets out the security concern relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have considered the disqualifying conditions under personal conduct AG ¶ 16 and the following is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The Government alleged Applicant intentionally falsified her SCA. Applicant denied the allegation. The Government failed to provide any evidence to establish her intent. The above disqualifying condition does not apply. I find for Applicant under the personal conduct guideline.

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 guidelines 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 54 years old. She honorably retired from the military. She experienced financial problems when her brother, who was sharing household expenses, moved. She attempted to pay bills on her income, but fell behind. She contracted with a DRC in August 2013 and has been systemically resolving her debts. She provided sufficient evidence to conclude that although all of the delinquent debts are not yet resolved, she is committed to completing the process. Applicant established a consistent track record to show she is responsibly resolving her financial problems. There is sufficient evidence to conclude Applicant has met her burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude she mitigated the security concerns arising under Guideline F, financial considerations. I also find the Government failed to meet its burden under Guideline E, personal conduct, and find in her favor.

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.y: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge