



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



In the matter of:)
)
) ISCR Case No. 15-05830
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On August 18, 2015, 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 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 DOD on September 1, 2006.

Applicant answered the SOR on August 24, 2015, and requested a hearing before an administrative judge. The case was assigned to me on October 7, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October

29, 2015. I convened the hearing as scheduled on November 17, 2015. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. In addition, the Government submitted an exhibit list that was marked as Hearing Exhibit I. Applicant and one witness testified. She offered Applicant Exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 30, 2015.

Procedural Issue

The Government moved to withdraw SOR ¶ 1.e. There was no objection and the motion was granted.

Findings of Fact

Applicant admitted all the allegations in the SOR, with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 56 years old. She is a high school graduate. She served in the military from 1979 to 1992, attained the rank of E-6, and was honorably discharged. She married in 1978 and divorced in 1999.¹ She has been in a committed relationship since 2012. Applicant has four grown children, ages 32, 31, 29 and 26. She provides financial support to her 31-year-old daughter, who has two children, and is attending school. She helps support her two grandchildren. She also provides some financial assistance to her 29-year-old son who recently lost his job.²

Applicant has been in business with her cohabitant for ten years. They have worked as a subcontractor for a government contractor for about a year. Before then, they worked for a different government contractor for about three years.³

Applicant testified that when she was in her 40s she attempted to financially help her children. She was a single mother and had the sole responsibility for them. Her children would get into financial problems and she would help them. This resulted in her delaying paying her own debts. She admitted she had financial difficulties from 2004 to 2009.⁴

Applicant indicated that she disputed the debt in SOR ¶ 1.a (\$232) owed to a telephone company. She stated she contacted the creditor by telephone because the account was not from the state where she resided, and it did not belong to her. She

¹ Applicant and her ex-husband separated in 1997 after he was arrested and charged with a serious felony. She has not had contact with him since 1997. She was solely responsible for their children.

² Tr. 47-53.

³ Tr. 53-54.

⁴ Tr. 45-48.

requested the account be removed from her credit report. She did not receive written correspondence from the creditor. Her November 2014 credit report reflects the account is in dispute. The account is not listed on her November 2015 credit report.⁵

The debt is SOR ¶ 1.b (\$1,257) is for cell phones. Applicant testified that the company sent her three free cell phones. She sent the cell phones back, yet it still charged her activation fees. She was unaware of the debt until she had her background interview with a government investigator. After the interview, she contacted the cell phone company, and it advised her it did not have a record of the debt. She disputed the debt on her credit report. The November 2014 credit report shows the debt was in collection. The November 2015 credit report does not reflect this debt.⁶

Applicant stated the debt in SOR ¶ 1.c (\$330) is more than ten years old. She indicated that a long time ago she disputed the debt online through the credit bureau. The November 2014 credit report indicates the debt is being disputed. The debt is no longer listed on the November 2015 credit report.⁷

Applicant indicated she paid the credit card debt in SOR ¶ 1.d (\$571). After her background interview she contacted the creditor and was advised they no longer had a record of the debt. She asked the creditor to remove the debt from her credit report. It is not reflected on her most recent credit report.⁸

In June 2007, Applicant cosigned a car loan with her son (SOR ¶ 1.f, \$13,340). She testified that she was making the monthly payments and the loan was not in arrears. Her son was in an accident with the car, and the insurance paid for the repairs. Her son's driver's license was suspended for failing to pay an out-of-state ticket. She stated that because her son continued to drive with a suspended license, the car was repossessed in 2009, even though the loan was being paid and she had a valid license. Applicant attempted to get the car back, but was unsuccessful. Her son advised her that the car was sold. She understood she was equally responsible for the debt because she cosigned the loan. Applicant disputed the debt because she believed the creditor wrongfully repossessed the vehicle because the loan was not delinquent. Despite her attempts the creditor refused to return the vehicle, because they sold it and refused to cancel the debt. The debt is listed as charged-off on her most recent credit report. She testified she disputed the debt with the creditor, but it refused to provide her anything in writing. She also stated that she believed her son had contacted the creditor, but she

⁵ Tr. 21-24. GE 3 is a credit report dated November 11, 2014. AE D is a credit report dated November 12, 2015.

⁶ Tr. 25-31; GE 3; AE E.

⁷ Tr. 31-33; GE 3; AE E.

⁸ Tr. 33-34; GE 3; AE E.

did not have confirmation of his actions. She has not received an Internal Revenue Service cancellation of debt form. The debt remains on her most recent credit report.⁹

Applicant did not recognize the debt in SOR ¶ 1.g (\$476), but acknowledged that at one time she had an account with the creditor, but did not believe she still owed a balance. It is on her 2014 credit report as charged off. It is not listed on her 2015 credit report. She believed the account was resolved.¹⁰

Applicant testified that she is current on all of her monthly expenses and bills. She maintains a detailed written budget. She has timely filed her tax returns and paid her taxes. She does not have any new delinquent debts and the only one remaining on her credit report is the car loan (SOR ¶ 1.f). Applicant has not had any financial counseling.¹¹

Applicant's business partner and cohabitant testified on her behalf. He has known her for 14 years and they have worked together. He described Applicant as a war veteran who raised four children by herself. She gave up her military career to take care of her children. He and Applicant share their income and living expenses. He believes Applicant is trustworthy.¹²

Applicant provided a character letter from a supervisor who stated she was consistently impressed with Applicant's attitude toward her work and performance on the job. She has productive working relationships with the customers and the office staff. Applicant has demonstrated the highest degree of maintaining confidentiality regarding her work. Her character has never been in doubt. She is trusted, honest, and maintains the highest level of integrity. Other supervisors described Applicant as completely trustworthy, dependable, dedicated, loyal, and professional. She completely abided by her employer's policies and procedures.¹³

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 used in evaluating an applicant's eligibility for access to classified information.

⁹ Tr. 35-41, 59; GE 3; AE E.

¹⁰ Tr. 41-44; GE 3; AE E.

¹¹ Tr. 44, 50, 55-58, 65-67.

¹² Tr. 61-65.

¹³ AE B, C, and D.

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 not drawn 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 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 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 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 all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant had delinquent debts that were unpaid for several years. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 acknowledged she had financial problems from 2004 to 2009. She was a single mother raising four children and was helping them financially. Only one debt that was alleged remains on her most recent credit report. She credibly testified that she believed her son was contacting the creditor to resolve that debt. After considering

Applicant's testimony, demeanor, and candor, I found her testimony was credible. She has a written budget and is paying her current expenses. There are no new delinquent debts. AG ¶ 20(a) does not apply because Applicant and her son are still resolving the car loan debt (SOR ¶ 1.f), and therefore the debt is recent.

Applicant's attributed her financial problems to helping her children and grandchildren. This was somewhat beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. There is some evidence that Applicant contacted creditors because she believed the debts were paid or were in error. AG ¶ 20(b) partially applies.

Applicant did not provide proof she had paid the debts alleged in the SOR. She provided a copy of her most recent credit report that indicates she has only one remaining delinquent debt (SOR ¶ 1.f) listed. It appears she is living within her means, has a written budget, and is paying her monthly expenses on time. There are clear indications Applicant's financial problems are under control. AG ¶ 20(c) applies.

There is some evidence that Applicant attempted to resolve some of her debts by contacting the creditors. Applicant disputed certain debts alleged in the SOR because she believed she had paid the debts, they did not belong to her, or they had been otherwise resolved and removed from her credit report. It appears many of the debts are old and from a time when she admittedly was having financial problems. Except for the car loan in SOR ¶ 1.f, none of the other SOR debts appear on her most recent credit report. The report does not reflect the reason they are no longer listed. AG ¶ 20(d) partially applies. AG ¶ 20(e) applies to the debts she disputed.

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 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 56 years old. She served in the military for more than 12 years and then as a single mother supported and raised her children. Over the years she has helped them financially and continues to provide financial support to two of her children and her grandchildren. She does not have a stellar financial record. However, Applicant has worked hard to be more financially responsible. Her most recent credit report reflects only one debt. It is substantial and she has been disputing it with the creditor. It is unknown why the other debts were removed from her credit report. I found Applicant's testimony credible and believe she is living within her means. Although her financial history is not perfect, I do not believe it rises to the level of being a security concern. The Government does not require applicants to be debt-free or that all of their debts must be completely paid, but rather an applicant must show they are acting responsibly and their conduct does not raise questions about their reliability, trustworthiness, and good judgment. I find Applicant met her burden of persuasion. Overall, the record evidence does not leave me with questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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.d: | For Applicant |
| Subparagraph 1.e: | Withdrawn |
| Subparagraphs 1.f-1.g: | 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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge