



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 14-03169

Applicant for Security Clearance

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel

For Applicant: *Pro se*

05/22/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On March 2, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) sent financial interrogatories to Applicant. After reviewing the results of the OPM investigation and Applicant's responses to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated October 16, 2014, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR in an undated response. She admitted the 30 delinquent debts. She provided documentation that she paid four debts (SOR 1.s, 1.t, 1.x, and 1.z), and was paying three other debts (SOR 1.u, 1.v, and 1. w). Department Counsel was prepared to proceed on January 16, 2015, and the case was assigned to another administrative judge. An initial hearing was postponed because of inclement weather. The case was reassigned to me on March 13, 2015. A notice of hearing was sent to Applicant on March 27, 2015, scheduling a hearing for April 15, 2015. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 4. Applicant testified, and submitted three exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through C. I kept the record open for Applicant to submit additional documents. Applicant timely submitted four documents that I marked and admitted into the record as Applicant Exhibits (AX) D through G without objection (GX 5, Memorandum, dated May 7, 2015). I received the transcript of the hearing (Tr.) on April 23, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 30 years old and has been employed for eight years as an electrician in a shipyard. She has been an electrical supervisor for the last three years. She has an associate's degree in engineering and is continuing her education for a bachelor's degree in business. She served on active duty in the Navy for two years from May 2004 until April 2006. After leaving active duty, she entered the shipyard's apprentice program in February 2007. She completed the program and was certified as an electrician in February 2012. Applicant's immediate supervisor wrote that he has worked with her for over five years. Applicant brings leadership skills to the job, and as foreman, supervises a crew of 15 to 18 employees daily. She is a hard worker, extremely dependable, conscientious, and always willing to take on new challenges and work opportunities. (Tr. 11-13; GX 1, e-QIP, dated May 2, 2012; AX A, Letter, dated March 14, 2015; AX D, DD 214)

Applicant's monthly income from her shipyard pay and payments under the G.I. bill for schooling is approximately \$3,400. Her monthly expenses total \$2,900, leaving \$500 in discretionary income. (Tr. 56-62; GX 2, Personal Financial Statement, dated January 232, 2014)

Applicant is not married. She met her partner in the Navy and they left active duty together. Her partner had a child at the time. Shortly after leaving active duty, her partner started using drugs and drinking alcohol and left Applicant with the responsibility of caring for the child. Applicant did not have legal custody of the child and had to be a

fulltime mother for the child while working fulltime and attending school fulltime. She had a difficult time paying the bills and started accumulating delinquent debt. Her partner returned and had another child. After the birth of the second child, her partner again used drugs and alcohol and left the children in Applicant's care. Applicant had no other source of income and had to care for the children by herself. She did not want to abandon the children and place them in the foster care system. She wanted to keep the children in a stable home so they had a chance in life. The children are now seven and five. She gained legal custody of the seven-year-old so she could get her into the school system. She is unable to get assistance for the children because she does not have full legal custody of them. She maintains a close relationship with the children's grandparents so they can help provide a stable family life for the children. (Tr. 22-32)

Credit reports (GX 3, dated May 17, 2012; GX 4, dated January 15, 2015), and Applicant's responses to the OPM investigator and answers to the interrogatories (GX 2, dated January 23, 2014) list delinquent debts for Applicant. The SOR lists 30 delinquent debts totaling approximately \$24,000. The debts consist of 17 medical debts totaling \$4,500, a car repossession debt for \$12,573, five judgments for apartment related charges for approximately \$3,700, and other delinquent consumer debts and loans for approximately \$2,500. Applicant was unable to start paying back her delinquent debts until she became a supervisor in the shipyard. In her response to the SOR, Applicant included documentation that she paid two judgments arising from apartments she shared with her partner (Tr. 40-42; SOR 1.s, and 1.t). Another judgment involving apartment rent was paid by garnishment. (Tr. 49-50)

Applicant presented documentation that she paid the judgment at SOR 1.a. (Tr. 32-34; AX B, Letter, dated March 11, 2015) Medical debts, totaling approximately \$4,500 (SOR 1.b to 1.r, and 1.bb), have been consolidated and Applicant is paying at least \$100 monthly towards the debts. The debts are almost paid in full. (Tr. 34-40; AX E, Bank Statement; AX G, Letter, dated April 19, 2015)

Applicant returned the car she had when she left active duty to the dealer. The car had low mileage and was in good condition. The repossession debt at SOR 1.w was for the entire amount of the remaining car loan. Applicant did not receive documentation from the dealer on the amount of the loan remaining after the car was sold. She settled the debt for \$5,000, and the debt was recently paid in full. (Tr. 44-47)

The judgements at SOR 1.u and 1.v are for apartment rental or damage when Applicant was on active duty and shared an apartment with other sailors. She notified the landlord that she was leaving the apartment before the termination of the lease but the roommates stayed. After she left the apartment, the roommates damaged the apartment and terminated the lease early. The judgments are for the early termination and the damage. Applicant has been negotiating with the landlord to settle the debt for her share of the rent. They have not reached an agreement. (Tr. 42-44)

Applicant is paying the utility debt at SOR 1.cc in two payments. She made the first payment and the second payment was due shortly after the hearing. (Tr. 51-52; AX C, Letter, dated March 23, 2015)

Applicant is attempting to negotiate payment plans on her remaining debts. She has not been able to locate the creditor for the loan debt at SOR 1.x since they have moved. (Tr. 47-48) She negotiated a payment plan with the credit union for the debt at SOR 1.y and will start paying the debt when she completes paying the consolidated medical debts. (Tr. 48-49). She is still attempting to learn the status of the insurance debt at SOR 1.aa. (Tr. 50) She has no information on the debt at SOO 1.dd and believes it may be a debt that her former partner incurred in Applicant's name. (52-53). Applicant also made payments on some debts that were not listed in the SOR. (Tr. 53-54; GX 3, Credit Report, dated May 7, 2012; GX 4, Credit Report, dated January 15, 2015)

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 must be considered 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, 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 in seeking 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 the 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.

Analysis

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant incurred delinquent debt starting in approximately 2006 after she left active duty in the Navy and had to care for children left in her care by her partner. Applicant's history of delinquent debts is documented in her credit report, her answers to interrogatories, her responses to questions of the OPM investigator, and her SOR response. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under the Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and (c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy delinquent debt.

I considered the following Financial Considerations 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 problems 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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions at AG ¶¶ 20 (a) and (b) apply. Applicant incurred delinquent debt when her domestic partner left her to care for her two children. Applicant did not want the children to enter the foster care system so she did what she could to provide for and raise them. She had no assistance in raising the children and incurred delinquent debt for medical and other living expenses. She also had previous debt from the period of her active duty Navy service that she was unable to satisfy because she was providing for the children. Applicant has current debts to resolve and others being resolved under a plan. The debts were incurred under unusual circumstances which were beyond her control when she had to provide for two children left in her care. She paid most of the debts and is paying others so there is a clear indication that she acted responsibly and the problem is being resolved or under control.

Applicant did not provide information on any financial counseling or advice she received. The financial problems are resolved or under control since her debts are either paid or being paid. AG ¶ 20(c) applies in part.

AG ¶ 20(d) applies. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts in the future is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant presented evidence that she has paid or resolved five of the delinquent debts totaling over half of the total amount of the delinquent debts. She has a payment

plan for 17 small medical debts and is paying under the plan. She has almost completed payments under this plan. She is paying another debt that has only one payment remaining. She is negotiating settlements for two other debts. She will start to pay the remaining debts when she completes payment of the medical debts. She also resolved other debts not listed on the SOR. She has funds to resolve her remaining debts and has a viable plan to resolve her debts through the plan.

Applicant has shown that she is managing her personal financial obligations reasonably and responsibly, and her financial problems are behind her. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's honorable two years of service in the Navy. I considered that she completed an apprentice program, earned an associate's degree, and is continuing her education towards a bachelor's degree. I considered her rapid rise in her career field, her excellent job performance, and the laudatory comments of her supervisor. I also considered that she showed strength of character to assume the care of two children that she is not responsible for rather than abandon them or send them to the foster care system.

Applicant has paid most of her delinquent debts and has a plan to continue to resolve her remaining debts. This information shows Applicant's responsible management of her finances. Applicant presented sufficient information to establish that she acted reasonably and responsibly towards her finances, and will continue to

responsibly manage her financial obligations. This indicates that she will be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated 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.dd: 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.

THOMAS M. CREAN
Administrative Judge