



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



In the matter of:

ISCR Case No. 14-04622

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

October 30, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 38-year-old employee of a defense contractor. She discharged a Chapter 7 bankruptcy filing in March 2012, and then subsequently filed for Chapter 13 bankruptcy relief in June 2012, which was dismissed in July 2013. She has participated in financial counseling and there are clear indications that her financial problems are under control. Eligibility for access to classified information is granted.

Statement of the Case

On December 15, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken 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 September 1, 2006.

Applicant answered the SOR on January 13, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2015, scheduling the hearing for September 10, 2015. The case was reassigned to me on August 28, 2015. The hearing was convened as previously scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant testified on her own behalf. The record then closed. DOHA received the transcript of the hearing (Tr.) on September 21, 2015.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. She has worked for her employer for the past 15 years. Applicant is married and has two children, ages four and eight. She is currently enrolled in a master's degree program. (GE 1; Tr. 23.)

As alleged in the SOR, Applicant discharged a Chapter 7 bankruptcy filing in March 2012, and then subsequently filed for Chapter 13 bankruptcy relief in June 2012, which was dismissed in July 2013. Applicant admitted both of the allegations listed in the SOR subparagraphs. Her bankruptcies are found in the credit reports and case summaries entered into evidence. (Answer; GE 1; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7.)

Applicant testified she and her husband found themselves with \$50,000 to \$60,000 in consumer debt as a result of several events including: overspending; problems with tenants in a rental property; her time off of work for maternity leave; and her husband being laid off from his job three times including January 2010 to June 2010, February 2013 to June 2013, and February 2014 to September 2014. She acknowledged her responsibility in incurring the debts. At first, she tried to negotiate with her creditors, but her attempts were unsuccessful. She also hired a debt settlement company to manage their debt, but that company went out of business and "basically just took [their] money." (AE A; Tr. 25-26, 29, 36.)

Applicant hired a bankruptcy attorney and filed for Chapter 7 bankruptcy in November 2011. She listed liabilities of \$1,005,579. The majority of that debt, \$949,898, was in secured claims and not discharged through the bankruptcy. On March 15, 2012, Applicant and her husband discharged \$55,673 in unsecured consumer debt. After the bankruptcy, they still had two loans, that were secured with mortgages on their home, totaling \$553,753; a \$309,871 rental property loan that was secured with a mortgage; a timeshare; and two loans secured by luxury vehicles. Applicant knew she needed to make changes to rehabilitate their financial situation. She and her husband relinquished their two cars to the lenders through voluntary repossessions. They short sold the rental property. The timeshare company accepted a deed in lieu of foreclosure. However, she still needed to resolve her home mortgage debt. Her attorney advised her that she should file Chapter 13 bankruptcy to force the mortgage company holding the first and second mortgages on her home to negotiate a modification. She followed that advice,

and filed for Chapter 13 bankruptcy protection on June 21, 2012. Applicant was able to negotiate a mortgage modification, and on September 16, 2013, the Chapter 13 bankruptcy was dismissed. She is now current on her mortgage obligations. (GE 1; GE 2; GE 3; GE 6; GE 7; AE B; AE C; Tr. 25-26, 29, 36.)

Applicant testified that going through bankruptcy was a “humiliating process.” She explained:

You realize that maybe you weren't as responsible as you think you were because, you know, on the outside people see you as responsible. But we overspent. We did have a period of what I would call materialism, acting like the money train was never going to end, you know, because we did have good times and we were young. (Tr. 28.)

Applicant participated in ten weeks of financial counseling through her church. She also documented that she participated in the financial counseling required by the bankruptcy court. Her husband has been fully employed for the past year. She currently has no credit card debt. She does not participate in activities that she cannot pay cash for “because I don't want any more debt.” She is aggressively paying off her and her husband's current car loans by paying more than the monthly bill. Their family has a budget and is able to stick to it. At the end of the month, after all her bills have been paid, she has a monthly surplus of \$1,500 which they put in savings or use to make extra car payments. (Tr. 26, 29-31, 38-39.)

Applicant is a volunteer with her church and is an assistant unit leader for a troop of girls. She has always received “outstanding” performance evaluations at work. (Tr. 47-48.)

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 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, administrative judges apply the guidelines 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(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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 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.

Section 7 of EO 10865 provides that adverse 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, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's delinquent debts began accumulating in approximately 2010, during her husband's first layoff. She had a history of debt from at least 2010 to 2013. During that time, she was unable to satisfy her financial obligations. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three 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;
- (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 initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debt occurred under circumstances that are unlikely to recur. She has matured and is now financially responsible. She has educated herself on financial management and only spends what she can afford. She and her family follow a strict budget. She discharged her consumer debt through Chapter 7 and satisfied her secured creditors. Her current credit report reflects no past-due debts. While Applicant had financial problems in the past, her problems do not cast doubt on her current reliability, trustworthiness, or good judgment. She established substantial mitigation under MC 20(a).

Applicant took many steps to resolve her debt. First, she tried to negotiate with her creditors herself. Second, she hired a debt management company to help her with the creditors. When that failed she sought counseling with an attorney. The attorney recommended bankruptcy and guided Applicant through both the Chapter 7 and Chapter 13 filings. Her current credit report shows no delinquencies. Applicant received ten weeks of financial counseling through her church. She also completed financial counseling as required during her bankruptcy proceedings. She has utilized the tools she learned in those classes and is resolved to remain financially solvent. There are clear indications that Applicant's financial problems are resolved. She established substantial mitigation under MC 20(c) and MC 20(d).

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 has served as a government contractor for 15 years and her performance is "outstanding." Her financial difficulties have been resolved. Applicant established sufficient evidence to show that the likelihood of continuation or recurrence is low. 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 Financial Considerations security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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.

Jennifer I. Goldstein
Administrative Judge