



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 14-05644

Appearances

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

For Applicant: *Pro se*

05/27/2015

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 and personal conduct security concerns.

Statement of the Case

On November 19, 2013, 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) could not make the affirmative findings required to issue a security clearance. DOD issued Applicant a Statement of Reasons (SOR), dated January 15, 2015, detailing security concerns for financial considerations under Guideline F and personal conduct under Guideline E. 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 on February 13, 2015. She admitted the 12 delinquent debts and attached a number of exhibits to her response. She also admitted the personal conduct allegation with explanation. Department Counsel was prepared to proceed on March 23, 2015, and the case was assigned to me on March 25, 2015. A notice of hearing was sent to Applicant on March 27, 2015, scheduling a hearing for April 14, 2015. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 5. Applicant testified, and submitted five exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through G. I kept the record open for Applicant to submit additional documents. Applicant timely submitted five documents that I marked and admitted into the record as AX H through L. Department Counsel did not object to the admission of the additional documents. (GX 6, e-mail, dated April 22, 2015; GX 7, e-mail, dated May 4, 2015). I received the transcript of the hearing (Tr.) on April 22, 2015.

Findings of Fact

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

Applicant is 33 years old and was employed from March 2008 until January 2015 as a communications specialist for a computer company. In January 2015, she switched employment to another defense contractor as an information technology specialist. She received her bachelor's degree in 2006. Applicant married in August 2006, and she has three children. (Tr. 16-18, 24-25; GX 1, e-QIP, dated November 9, 2013)

Applicant's husband served 14 years on active duty in the Navy. He was released from active duty in July 2011 because he had not been promoted to first class petty officer (E-6) within the time limits. At the time, her husband provided the major income for the family, paying over 70% of the family's bills. He had been earning about \$3,000 monthly and his new pay was drastically less. They had one child at the time. Her husband had MSRA, was bi-polar, and had PTSD health problems. He received a severance payment from the Navy which permitted the family to make their mortgage payments and pay their normal recurring bills. He applied for, but has not yet been awarded disability. Applicant's husband found employment in October 2011, but could work only sporadically because of his health issues. He was laid off in May 2012, and he had to find a different occupation that could accommodate his health problems. In August 2012, he started school using the G.I. bill to study information technology.

Applicant became pregnant in 2012 and had her second child in March 2013. She recently gave birth to her third child. When Applicant had her first child, her husband was on active duty and medical expenses were paid by the military. When she had her second and third child, the family was no longer under the military medical system, but had health insurance which paid some, but not all of their health expenses. They incurred some medical expenses that they did not anticipate because Applicant's pregnancies were high risk. Applicant was unable to work during parts of her

pregnancies because they were high risk. The family had a difficult time paying their expenses. Their families helped them with some expenses. Applicant and her husband, in addition to their regular employment, took on odd jobs, such as delivering newspapers and phone books, to earn extra income. Applicant's monthly income in 2011 was approximately \$2,400. Their monthly mortgage payment was over half of her income. (Tr. 18-23, 32-42; AX A, Bank Statement of Salary Deposit, dated October 15, 2014; AX B, Mortgage Statement)

The SOR lists financial security concerns for not filing a federal tax return for 2009 (SOR 1.a) and a state tax return for 2009 (SOR 1.b). The SOR also lists 17 delinquent debts for Applicant totaling slightly in excess of \$20,000. The debts include a student loan account with a balance of \$16,456 past due for \$684 (SOR 1.c); a credit card debt charged off for \$558 (SOR 1.d); medical accounts in collection for \$443 (SOR 1.e), \$202 (SOR 1.f), \$170 (SOR 1.g), \$140 (SOR 1.h), \$116 (SOR 1.i), \$113 (SOR 1.j), \$113 (SOR 1.k), \$108 (SOR 1.l), \$68 (SOR 1.m), \$49 (SR 1.n), \$30 (SOR 1.o), \$97 (SOR 1.q), \$64 (SOR 1.r (SOR 1.r), \$443 (SOR 1.s), \$815 (SOR 1.t), and \$61 (SOR 1.u); and another student loan with a balance of \$5,269 past due for \$42 (SOR 1.p).

Applicant and her husband did not timely file their federal and state income tax returns for 2009 because their return showed they owed taxes. Applicant thought she miscalculated the taxes since their combined income was not large. Applicant had the taxes recalculated, and it was determined that she did owe both federal and state taxes. She filed a request for an installment agreement with the IRS. (AX C) Applicant filed her federal and state tax returns and paid the taxes owed. Her taxes are now current. (Tr. 27-28; AX G, IRS Form 1040, 2009; AX I, State Tax Form 760, 2009; AX J, Money orders to IRS; AX K, IRS W-2 2009)

Applicant's student loans are on an income based payment plan. She provided information in her reply to the SOR to establish that she has been making the income based payments and that she is current with the student loan debts at SOR 1.c and 1.p. (Tr. 43-45; Response to SOR, ACS Account Summary, dated February 14, 2015)

Applicant has a payment plan for the credit card debt at SOR 1.d. She has been paying \$40 per month on the debt, and it is almost paid. (Tr. 45-46; Response to SOR, Payments to Alliance One; AX D, Receipts from Alliance One, various dates)

Applicant paid one of her medical debts (SOR 1.o) in full. (Tr. 49; Response to SOR, Receipt, dated January 30, 2015) Most of Applicant's remaining medical debts are in collection with two collection companies (SOR 1.e – 1.n). She has payment plans with both companies. She pays one company \$50 monthly and the other company \$40 monthly. She is current with her payments. The remaining medical debts (SOR 1.q -1.t) are being collected by a law firm. Applicant has been in contact with them and will start to pay those medical debts of less than \$1,000 when she completes paying the rest of the medical debts. (Tr. 50-52; Response to SOR, Equidata and Credit Control payments; AX E, Receipts, various dates; AX F, Receipt, dated April 15, 2015) The debt at SOR 1.u was paid in 2014. (Tr. 54; AX L, Letter, dated January 30, 2015)

Applicant paid or is paying most of her delinquent debts. She has a few debts that she has not yet started paying, but she will start these debts on a payment plan when she completes her present payment plans. (Tr. 57-61)

Applicant answered “no” on her security clearance application when asked if in the last seven years she failed to file or pay federal or state taxes as required by law. She had not filed her 2009 federal and state taxes at the time she completed the security clearance application. Applicant partially completed her federal and state tax returns forms for 2009. She did not understand why she owed taxes since the family income had been drastically reduced. She sent the tax forms to a tax preparation firm to be checked and had not completed the process of verifying the taxes. She knew at the time she completed her security clearance application that she had not filed the returns and would owe taxes. She interpreted the question on the application as asking if she submitted a tax return and deliberately or negligently failed to pay the taxes owed. She misinterpreted the intent of the question. She informed the OPM investigator that she had not yet filed her 2009 federal and state tax returns, but would when they had been verified. She stated that she did not deliberately fail to provide correct information since she knew that it is very easy to determine if a person filed tax returns and paid the taxes owed. (Tr. 61-65)

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 when her husband involuntarily left active duty in the Navy and lost income. Applicant and her husband were unable to meet their financial obligations because of the loss of income and consequently incurred delinquent debt. Applicant’s history of delinquent debts is documented in her credit report, 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 husband was involuntarily discharged from active duty because he was not promoted on time to the next highest grade. He had injuries and illnesses that prevented him from performing his duties. The family lost over 70% of their income. Applicant's husband applied for, but has not received a disability which is still pending. Her husband was not unable to immediately find permanent employment because of his disabilities. He was able to use his severance payments to stay current with his mortgage. She continued her employment, but was the sole source of income for the family. She became pregnant in 2012 and 2013, could not work at times, and incurred unanticipated medical debts for her high risk pregnancies and the care of the two children. The medical expenses and loss of income caused the family to incur delinquent debts. The circumstances leading to delinquent debt were largely beyond Applicant's control, unique, and unlikely to recur since both Applicant and her husband are now employed. Applicant has resolved some debts, but she has current debts that she is resolving under payment plans. Her payment of some of the debts and her payment plans for others are a clear indication that she is acting 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 filed federal and state tax returns for the one year she did not file and directly paid all taxes owed rather than rely on a garnishment or lien (SOR 1.a and 1.b). She presented sufficient information to establish that she is current with and paying her student loans (SOR 1.c and 1.p). She presented information that she paid some medical debts and is current with a payment plan for most of her remaining medical debts (SOR 1.d, 1.e- 1.n, and 1.o). She presented evidence of two debts she paid in full (SOR 1.d. and 1.u). She is in contact with the creditor for her remaining medical debts and has a plan to resolve these debts (SOR 1.q – 1.t). She will start to pay the remaining debts when she completes payment of the other medical debts. She has funds to resolve her remaining debts and has a viable plan to resolve her debts.

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.

Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

On her e-QIP, Appellant answered “no” to a question asking if in the last seven years, she failed to file or pay federal and state tax returns as required by law. Applicant failed to timely file tax returns and owed state and federal taxes for tax year 2009. Her failure to reveal on her security clearance application that she did not timely file her federal and state tax returns raises a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(a) (the 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 eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied intentional falsification for failing to advise that she did not timely file federal tax returns. She knew at the time she completed that application that she had not filed the returns and would owe taxes. Applicant prepared tax returns for 2009, but thought she had made a mistake in calculating the taxes. She sent the tax forms to a tax preparation firm to be checked, but she had not received verified returns back by the time she submitted the security clearance application. Applicant misinterpreted the intent of the question believing that it pertained to knowing you owed taxes and deliberately not paying the taxes. She filed the tax returns and paid the taxes owed. She stated that she did not deliberately fail to provide correct information since she knew that it is very easy to determine if a person filed tax returns and paid the taxes owed.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. Applicant misinterpreted the question. She prepared her tax returns for 2009, thought she made a mistake, and had them checked by a professional. When she was satisfied that the returns were correct, she filed the returns and paid the taxes. I find Applicant did not deliberately fail to provide correct and accurate financial information on the security clearance application. I find for Applicant as to personal conduct.

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 that Applicant incurred delinquent debt under unique circumstances beyond her control. I considered that Applicant and her husband sought other sources of income when they incurred the financial problems. Applicant paid some of her debts, is paying others under payment plans, and has plans to resolve the remaining debts. Applicant presented sufficient information to establish that she acted reasonably and responsibly towards her finances. Applicant's payment of delinquent debts and her plans to continue to resolve her remaining debts 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. Applicant did not deliberately fail to provide accurate and correct information on her security clearance application concerning her failure to timely file federal and state tax returns. 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 and personal conduct guidelines.

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.u:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge