



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



In the matter of:)	
)	
)	ISCR Case No. 15-00061
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2016

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 1, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered (Answer) the SOR on September 10, 2015, and requested a hearing. The case was assigned to me on November 2, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 10, 2015, setting the hearing for December 10, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence

without objection. I marked Department Counsel's discovery letter, which included an exhibit list as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through J, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. She did not submit any further evidence. DOHA received the hearing transcript (Tr.) on December 23, 2015.

Findings of Fact

Applicant is 37 years old and has worked for government contractors since 2005 (employed by current contractor-employer since 2009). She has a high school diploma and has taken some college courses. She is divorced (since 2008) and has three minor children for whom she has custody. She served in the Army Reserve from 1996 to 2005 and was honorably discharged in the pay grade of E-5. She has held a security clearance since becoming a contractor employee and has never had a security incident.¹

The SOR alleges Applicant has 15 delinquent debts totaling approximately \$24,575. The debts were listed on credit reports from January 2013, September 2014, and October 2015. Applicant admitted some of the allegations and denied others. The admissions will be treated as findings of fact.²

Applicant's financial difficulties came about because of her divorce. Before the divorce, both she and her ex-husband contributed to the family obligations. After their separation, Applicant's ex-husband refused to contribute to paying their obligations and refused to pay his obligatory child support. Applicant stated that for the six years they have been divorced, her ex-husband has only made 13 child support payments. He owes approximately \$15,000 in back child support. As a consequence of losing her ex-husband's income, Applicant was unable to make all of her debt payments. She has recently taken action to address her debt situation. The status of the debts is as follows:³

SOR ¶ 1.a mortgage account (\$4,873 past due on total debt of \$134,618):

Applicant's ability to make her mortgage payments was impacted by her ex-husband's refusal to contribute to these payments. She attempted to pursue a short sale of the property, but her ex-husband refused to cooperate in the sale. The property eventually went through a foreclosure sale and the debt was satisfied. Applicant provided documentary proof of the sale with a price above the amount she owed. This debt is resolved.⁴

¹ Tr. at 5-6, 26-27, 39; GE 1.

² Answer; GE 2, 4-5.

³ Tr. at 23, 26, 40; Answer.

⁴ Tr. at 29-30; AE I.

SOR ¶¶ 1.b-1.d consumer debts (\$6,340; \$5,488; \$1,132):

Applicant testified that these three debts were for car payments that her ex-husband was responsible for pursuant to their divorce settlement. He failed to make the required payments. Applicant made contact with the current creditor in order to work out a payment arrangement. This debt is being resolved.⁵

SOR ¶ 1.e medical debt (\$65):

Applicant attempted to track down this medical debt, but without a creditor's name or full account number she was unable to do so. The debt does not appear on the two most recent credit reports. This debt is resolved.⁶

SOR ¶ 1.f consumer debt (no amount stated):

Applicant claims she paid this account, but does not have documentation showing such payment. She provided a copy of an August 2015 credit report entry showing the charged-off account for \$918. She also provided a December 2015 credit report (by the same credit reporting service), which no longer contained this account. This debt is resolved.⁷

SOR ¶¶ 1.g and 1.h consumer debt (no amounts stated):

Applicant provided documentation showing these two accounts have no past-due amounts and both were closed with zero balances. These debts are resolved.⁸

SOR ¶ 1.i judgment (\$2,417):

Applicant testified that this debt was paid by payroll deduction and provided documentation from the court of record showing that no balance exists. This debt is resolved.⁹

SOR ¶ 1.j consumer debt (\$3,459):

Applicant attempted to track down this debt, without success. She disputed the debt with the credit reporting services, which were documented. The most recent credit report shows a zero balance and zero past due for this account. This debt is resolved.¹⁰

⁵ Tr. at 31-32; AE A.

⁶ Tr. at 33; GE 5; AE I.

⁷ Tr. at 33-34; AE B, J.

⁸ Tr. at 35; AE J.

⁹ Tr. at 35-36; AE C.

¹⁰ Tr. at 36-37; AE J.

SOR ¶ 1.k consumer debt (\$299):

Applicant presented documentation showing this account was paid in April 2013. This debt is resolved.¹¹

SOR ¶¶ 1.l-1.n medical debts (\$241; \$139; \$122):

Applicant testified she paid these three medical accounts, but does not have supporting documentation. The accounts do not appear on the two most recent Government credit reports. These debts are resolved.¹²

SOR ¶ 1.o consumer debt (\$103):

Applicant paid this account in June 2012. This debt is resolved.¹³

Applicant is current on her student loan payments and her other monthly obligations. She has about \$300 of monthly discretionary income once all her obligations are paid. She has a 401(K) plan with a balance of about \$16,000.¹⁴

Applicant presented the testimony of a former coworker who is aware of Applicant's financial difficulties related to her divorce. The witness also related her knowledge that Applicant has made strides toward resolving her financial issues. She recommends that Applicant retain her security clearance. Applicant also presented three reference letters from coworkers who all attested to her trustworthiness, dedication, honesty, and integrity.¹⁵

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 that 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 the adjudicative process. The administrative judge's

¹¹ Tr. at 38; AE D.

¹² Tr. at 38; GE 4-5.

¹³ Tr. at 39; AE E.

¹⁴ Tr. at 42-43, 50.

¹⁵ Tr. at 21-24; AE F-H.

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 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 about 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* Executive Order 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had multiple delinquent debts that she failed to pay over an extended period of time. The evidence is sufficient to raise both disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations 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.

The delinquent debts attributed to Applicant are somewhat remote, but still owed nonetheless. She was relieved of the mortgage debt when the property sold above the amount she owed at a foreclosure sale. She has paid all the delinquent debts for which she could track down. Since she has made a concerted effort to repair her financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

The circumstances of her divorce, where her ex-husband fails to pay child support and failed to honor his obligations under the divorce settlement, were conditions beyond her control. She acted responsibly by attempting to short sell her house before it

was foreclosed, paying several creditors, and by trying to locate other creditors, some without success. She also continued to pay her student loan debt. AG ¶ 20(b) applies.

There is no evidence Applicant received credit counseling. She made a good-faith effort to resolve the debts by either paying them or attempting to track down the current creditors. AG ¶ 20(c) and ¶ 20(d) partially apply. She also successfully disputed one debt, with supporting documentation (SOR ¶ 1.j), therefore, AG ¶ 20(e) also applies in part.

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 relevant 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.

I considered Applicant's military and federal contractor service. I found Applicant to be honest and candid about the circumstances that led to her debts. She took action to resolve them. I find it unlikely that Applicant will be in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about 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

Subparagraphs 1.a – 1.o: 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.

Robert E. Coacher
Administrative Judge