



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



In the matter of:

)	ISCR Case No. 15-02705
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2016

Decision

CREAN, Thomas M., Administrative Judge:

Applicant provided adequate documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On February 5, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. (Item 2) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on October 14, 2014. (Item 6) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 3, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 October 28, 2015. She did not respond with an admission or denial to each of the five financial allegations. However, she provided documents to establish that she paid the SOR debts. I considered her response to be a denial of the debts. She alleges that there are no delinquent debts since the debts have been paid. She elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on January 15, 2016. Applicant received a complete file of relevant material (FORM) on January 19, 2016, and was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant filed a timely reply to the FORM. (Item 7, undated) I was assigned the case on May 5, 2016.

Procedural Issues

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM agent (Item 6) was not authenticated and could not be considered over her objection. She was further advised that she could make any corrections, additions, or deletions to the summary to make it clear and accurate, and she could object to the admission of the summary as not authenticated by a Government witness. She was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that she waived any objection to the admissibility of the Personnel Subject Interview summary. Applicant did not respond to the FORM, so she waived any objection to the admissibility of the Personal Subject Interview summary. I will consider information in the Personal Subject Interview in my decision.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 50 years old. She is a high school graduate and has completed a technical school certification course in property book and supply management. She has been employed in the middle east for a defense contractor as a postal clerk since January 2010. Prior to that employment, she worked various jobs with defense contractors both in the United States and overseas. She worked in Iraq for a defense contractor as a supply technician from August 2007 until April 2008. Her first marriage ended in divorce. She married again in February 2007 and divorced in November 2011. She has two children of her own and two stepchildren. She is not required to pay any child support. (Item 2, e-QIP, dated February 5, 2011; Item 6, Personal Subject Interview, dated October 14, 2014)

The SOR lists and credit reports (Item 3, dated February 8, 2011; Item 4, dated September 26, 2014; and Item 5, dated September 30, 2015) confirm the following

delinquent debts for Applicant: a state tax lien entered January 2011 for \$1,599 (SOR 1.a); a different state tax lien entered February 2010 for \$5,096 (SOR 1.b); a telephone debt in collection for \$13,679 (SOR 1.c); a medical debt for \$350 (SOR 1.d); and a telephone debt in collection for \$598 (SOR 1.e). The total amount of the delinquent debt is approximately \$21,322.

Applicant did not list any financial issues on her e-QIP. The OPM security investigator in the Personal Subject Interview did not question her extensively about the status of her finances. He only inquired into a federal tax lien filed in September 2010 for \$6,033 that was listed on her credit reports. Applicant stated that she started to pay the 2009 federal tax debt but lost employment and did not have the financial resources to pay the taxes. Applicant started working again in early 2010. She filed her 2010 federal tax return, and the 2009 tax debt was taken from her 2010 tax refund. The federal tax lien has been satisfied. Applicant told the OPM security investigator that she had no other financial issues and her debts were current and paid on time. (Item 6, Personal Subject Interview, dated February 5, 2011 at 3-4).

Applicant's response to the SOR included documents showing payment of the debts raised in the SOR. She included documents that showed she paid the two state tax liens, the \$350 medical debt, and the \$598 telephone debt. Applicant established that she settled the \$13,679 telephone debt for \$4,000. This telephone bill was incurred by both Applicant and her former husband when they both served overseas and were placing calls to the United States. Applicant's response to the SOR shows that she made an initial payment of \$1,895 towards the settlement and then three monthly payments of \$702 each. Her response to the SOR shows that she resolved all of her share of the delinquent debts.

Department Counsel in the FORM points out that Applicant did not explain why she had unpaid bills, whether she was aware of the debts, and why she waited until the SOR was issued to make an effort to pay the debts. Department Counsel argued that the evidence shows poor judgment by Applicant in ignoring her financial responsibilities for a long period of time.

In her response to the FORM, Applicant stated that in 2008 and 2009, she and her husband had difficulty finding employment. They found employment overseas at different locations in January 2010. After going overseas, her husband was unfaithful and she filed for divorce. The legal fees for her divorce cost her over \$20,000.

When Applicant completed her e-QIP, she did not know what debts she had since her husband managed all of their finances. She learned of the debts after the divorce during the security clearance process. After her divorce, she intended to pay the debts but she had to assist family members with financial problems. Her mother has loaned her some funds that enabled her to pay the state tax liens, settled the large telephone debt, and paid the other two smaller debts. The telephone company holding the large telephone debt would not provide her with a statement concerning the settlement agreement. Applicant provided the telephone company information

concerning her former husband so they could have him pay his part of the telephone bill. (Item 7, Statement, dated March 18, 2016)

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 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 for obtaining 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.

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, thereby raising 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 ¶ 18) Similarly, 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 in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant's credit reports show a history of delinquent debts. She denied these debts and presented documents to show the debts had been paid. The credit reports and Applicant's action showing the debts are now paid is sufficient evidence to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy 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; and

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

Mitigating conditions AG ¶¶ 20(a), (b), and (d) apply. Applicant incurred delinquent debt when she was unemployed. Although unemployed, she acted reasonably under the circumstance by continuing to seek employment, even employment with a defense contractor in the middle east. She was not aware of the debts because her former husband managed their finances. She only became aware of the debts when confronted with them during the security clearance process.

Applicant established her good-faith initiative to pay his debts. 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.

Applicant has established her plan to pay the debts and showed a meaningful track record of debt payment. She borrowed money from her mother and presented supporting information that she has paid all of the delinquent debt listed in the SOR. By paying and being current with her debts, Applicant has shown that she acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards her finances. 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. Applicant incurred delinquent debt due to some unemployment, which was a condition beyond her control. She presented evidence that she paid all of her delinquent debts listed in the SOR. Applicant presented sufficient information to establish that she acted reasonably and responsibly towards her finances, and that she will continue to responsibly manage her financial obligations. 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.e 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