



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



In the matter of:)
)
Redacted) ISCR Case No. 11-09637
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2013

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concern. Her financial problems were caused by the unscrupulous conduct of her mortgage lender and her former husband's refusal to pay court-mandated child support. Prior to the issuance of the Statement of Reasons (SOR), Applicant satisfied her largest debt. She received financial counseling and has either resolved or is paying her other debts. She now has her finances firmly under control and handles her financial affairs in a responsible manner. She has worked for the same employer, a major defense contractor, for over 17 years and held a clearance the entire time without issue. Her past financial problems no longer raise doubts about her reliability, trustworthiness, or good judgment. Clearance is granted.

Procedural History

On September 19, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant an SOR, alleging security concerns under Guideline F (Financial Considerations). On October 11, 2012, Applicant answered the SOR and requested a hearing (Answer).

On November 14, 2012, Department Counsel indicated the Government was ready to proceed. I was assigned the case on November 29, 2012. After coordinating with the parties, I scheduled the hearing for January 16, 2013.

At hearing, Department Counsel offered Government Exhibits (Gx.) 1 through 4, which were admitted without objection. Applicant testified and after the hearing submitted Applicant's Exhibit (Ax.) A through C, which were admitted without objection. DOHA received the transcript (Tr.) on January 25, 2013.

Findings of Fact

Applicant is in her mid-forties. She is an administrative assistant for a major defense contractor, earning about \$45,000 annually. She has been working for her current employer for over 17 years and held a security clearance the entire time without issue. Her recent job evaluations state:

[Appellant] exceeds performance requirements with a good attitude, people skills, and willingness to accept new responsibility and challenges. She is the consummate team player, interacting with all the [redacted] team members, customers and other contractors in the [redacted] community. . . . She exceeds established responsibilities and goals . . . consistent with company ethics, values and behaviors. . . . She is constantly trying to increase her skill set.

(Tr. at 21, 35-37; GE 1; AE C)

Applicant obtained her bachelor's degree in 2006, while working full time and raising her daughter on her own. Her daughter is now 19 years old and is a freshman in college. Her daughter earned a number of academic scholarships that will pay for her tuition, as well as room and board. She also has a part-time job to pay for other miscellaneous expenses. (Tr. at 21-22, 25, 37-38; GE 1)

Applicant divorced in 1996 after five years of marriage. Her former husband was court ordered to provide child support, but routinely did not pay and when he did pay it was late or less than the amount ordered by the court. Applicant raised their daughter on her own with little to no financial assistance from her former husband. (Tr. at 21-22; 30-31, 42; GE 1)

Applicant's financial trouble started in late 2007, early 2008 when she purchased a home. At closing, the lender had, without explanation or cause, increased the interest rate and monthly mortgage payments beyond the amount she had been promised. Applicant signed the loan documents, planning on getting a second job or a roommate to defray the higher cost. She was able to pay her mortgage and other bills until three years ago when her former husband lost his job and stopped paying child support altogether. At about the same time, her late model car suffered a series of mechanical issues and the roommate arrangement fell through. Applicant attempted to get a second

job without success. Her daughter got a part-time job after school, but it was simply not enough to cover their increased household expenses. Applicant started using credit cards to pay for their day-to-day living expenses. She negotiated with the bank to modify her mortgage, but eventually decided to sell the house when her monthly expenses once again rose due to further car-related mechanical problems and the cost of her daughter's advanced placement and college-level courses. She sold the home and satisfied her mortgage in late 2011, early 2012. Applicant's mortgage debt was approximately \$150,000. (Tr. at 21-26, 38-42; GE 2)

Applicant sat down with a certified financial counselor for advice on resolving her other debts. She had previously attempted to negotiate with her overdue creditors to satisfy her credit card debt, but realized that she was unable to pay her delinquent debts without getting into further financial trouble. The financial counselor advised Applicant to file for bankruptcy to resolve her debt. Applicant met with a bankruptcy attorney who also advised her to file for bankruptcy. Applicant took the required financial counseling course, filed for bankruptcy, and her non-secured debts were discharged. The debts referenced in SOR ¶¶ a-j and m-s represent about \$25,000 in credit card debt, which were discharged in bankruptcy. None of the credit card debt was for extravagant consumer purchases or vacations. Instead, the purchases were for necessities. Applicant no longer has credit cards, except for an employer-provided credit card for travel-related business expenses. Applicant has not abused her employer-provided credit card, nor been late in paying travel-related charges. (Tr. at 23-33; Ax. B)

Applicant reaffirmed her car loan because she only has \$2,000 to \$3,000 left to pay on the car and, even though the car is a 10-year old model; it is more affordable than purchasing a new car. Applicant has brought the car loan current. She also contacted the creditor for her student loans and set up a payment arrangement. She has been paying per the terms of the agreement and the account is now current. These debts are referenced in SOR ¶¶ k and l. (Tr. at 23-36, Ax. A-B)

Applicant took another financial counseling course in November 2011. (Ax. B) She recently reduced her living expenses by moving in with a roommate, which will generate an extra \$500 a month in savings to pay for unanticipated expenditures and to bolster her savings account. She continues to live on a strict budget and has not accumulated any new delinquent debt. (Tr. at 23, 27-28, 33-34; GE 2)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge must apply the guidelines in a common sense manner and take into account the whole person in reaching a fair and impartial decision. An administrative judge should consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a security clearance.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." E.O. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication an applicant has not met the strict guidelines the President and the Secretary of Defense have established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at AG ¶ 18:

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.

One aspect of the concern is that an individual who is financially overextended may be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's past financial problem raises this concern and establishes the following disqualifying conditions under AG ¶ 19:

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

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

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

Applicant's financial problems were caused or exacerbated by matters beyond her control. The main culprits were her unscrupulous lender who changed the terms of her mortgage at closing and her former husband who failed to abide by court orders to provide child support. However, AG ¶ 20(b) is not fully applicable because Applicant

¹ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

was not forced to sign the loan documents and did not attempt to address her non-mortgage related debts until relatively recently.

Applicant met her burden in establishing AG ¶¶ 20(a), 20(c), and 20(d). Her past financial problems were not due to frivolous spending or other issues of concern. Instead, it arose under a unique set of circumstances at a time when Applicant was trying to pay for a home she could not afford and support a teenage daughter on her income alone. Both of these financial constraints no longer exist. Applicant's past financial problems are unlikely to recur because she has taken financially prudent steps that will allow her to pay her bills and any unexpected contingencies without having to rely on credit.

Furthermore, Applicant received financial counseling, addressed her past-due debts, and put her financial house in order. She satisfied the largest of her debts, the mortgage, before the SOR was issued. She attempted to resolve her credit card debt outside of bankruptcy and, only after she was advised by a certified financial counselor and an attorney that her only option was bankruptcy, did she file for bankruptcy. Outside of bankruptcy, Applicant addressed her student loans and, more importantly, demonstrated financial prudence by reaffirming the loan on her late model car versus adding more debt by purchasing a new car. In short, Applicant established that she is firmly in control of her finances and manages her finances in a responsible manner.

After weighing the applicable disqualifying and mitigating conditions, I find that Applicant mitigated the financial considerations concern. Her past debts no longer cast doubt on her current reliability, trustworthiness, or good judgment.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).² Applicant is a dependable, hard-working individual who has worked for a major defense contractor and held a security clearance without issue for the past 17 years. She has raised a child on her own and placed her daughter's well-being and education above her own self-interest. Such selflessness speaks volumes as to Applicant's character and ability to place her obligations above her own needs. Applicant answered the questions posed by the Government and myself in a straightforward fashion without making excuses or attempting to minimize her responsibility in resolving her debts. These favorable whole-person factors, coupled with Applicant's mitigation of the security concerns raised by her past financial problems,

² The non-exhaustive list of adjudicative factors are: (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.

leaves me firmly convinced that she can continue to be entrusted with classified information. Overall, the record evidence leaves me with no questions or doubts about Applicant's continued eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.s: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge