



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



In the matter of: REDACTED Applicant for Security Clearance)))))	ISCR Case No. 11-07015
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Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

10/24/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concern. She is a single mother who has raised four children on her own. Her past debts are largely attributable to the lack of financial support from her children’s father and her estranged husband’s wrongful act of removing the family from his health insurance. Applicant was left responsible for paying the medical bills for her children, which amounts to a significant portion of her outstanding debt. She has been making consistent, monthly debt repayments for the last 18 months and is in the process of resolving her financial situation. Clearance is granted.

Procedural History

On July 2, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), notifying her that it was unable to grant her a clearance because information from her background investigation raised the security concerns under Guideline F (Financial Considerations).¹ Applicant’s Answer, wherein

¹ DOHA took this action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense*

she requested a hearing before an administrative judge to present evidence to establish her eligibility for a clearance, was received by DOHA on August 3, 2012.

On September 1, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on September 7, 2012. After coordinating with the parties, I scheduled the hearing for October 4, 2012. At hearing, Department Counsel offered Government Exhibits (GE) 1 through 12, which were admitted without objection. Applicant testified, called several witnesses, and offered Applicant's Exhibit (AE) A through H, which were also admitted without objection.² DOHA received the transcript (Tr.) on October 12, 2012.

Findings of Fact

Applicant is a 37-year-old single mother who has raised four children on her own. Her eldest son is an adult, who lives on his own and is working. One of her other sons is going to college and is on the honor roll. Applicant still financially supports him. Applicant's daughter recently graduated from high school and has a four-year-old child. Her youngest child is in middle school. Applicant's daughter, her grandchild, and her youngest son live with her, and she is their sole source of financial support. She makes a concerted effort to make time for her children after work and on the weekends. (Tr. at 37, 44, 53-54, 69)

Applicant's financial trouble dates back to 2002, when the father of her three eldest children unexpectedly left the home. She was unable to afford the home they were living in and defaulted on the mortgage. She filed for Chapter 13 bankruptcy and resolved her mortgage-related debt by paying per the terms of the bankruptcy plan from 2002 to 2005. Applicant's bankruptcy was discharged in September 2005. (Tr. at 41, 44, 61-63; GE 8)

Applicant married her youngest child's father in 2004, but they separated soon thereafter because he was abusive. Applicant's estranged husband removed Applicant and her children, including his own child, from his health insurance. Applicant was unaware of this until one of her children was hospitalized. She was unable to afford the subsequent medical bills. Six of the debts listed in the SOR, totaling over \$7,300, relate to medical bills.³ Applicant and her youngest children now have health insurance. (Tr. at 44-46, 58-60, 75-76; GE 3; AE A at 3-7)

Applicant moved to State B in 2008, in order to be closer to her family, to provide for a better environment for her children, and because it was a more affordable location.

Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

² At the request of the parties, I left the record open until October 19, 2012 to provide each side the opportunity to submit additional matters for my consideration. Neither side submitted additional matters and the record closed on October 19, 2012. (Tr. at 87-88, 93-97)

³ SOR ¶¶ 1.g, 1.h, 1.i, 1.j, 1.k, and 1.p (medical-related debts).

She was unable to find a job near her new home and commutes nearly two hours each way to work. Applicant has been with her present employer for over seven years. Applicant's supervisor testified on her behalf. The supervisor has worked with Applicant on a daily basis, over the past seven years and they have shared long hours at work together. Applicant is entrusted with safeguarding and handling highly sensitive information at work. She has not had any disciplinary or other issues at work, and routinely works a 12-hour shift. Applicant's supervisor opined that Applicant is reliable and dependable, and has a strong work ethic. (Tr. at 26-33, 38, 70-71, 80-84)

Applicant does not have any credit cards and none of the SOR debts are related to extravagant or frivolous purchases. She does not purchase designer goods for herself or her children, and only buys the necessities they need. Applicant is thankful that her children understand when she tells them that she cannot afford to buy them certain things. Applicant has received child support on an infrequent basis and has not received any in several months. She has been unable to support herself and her children on her income alone. She disclosed her financial issues on her current security clearance application. (Tr. at 39, 43, 67-69; GE 1)

Applicant's car was repossessed in approximately January 2011. She established a repayment plan with the creditor in April 2011, made an initial payment of approximately \$400, and has been paying on a monthly, consistent basis \$150 a month. (Tr. at 40, 46-47, 56-58; GE 2 at 74) This is the largest debt listed on the SOR and the balance is down to \$4,813.⁴ (AE C at 4) Once she finishes paying off this debt, Applicant plans on using the \$150 to satisfy the other debts listed on the SOR that together total about \$7,000.⁵ Applicant also submitted documentary proof of having paid or resolved other debts not listed on the SOR, and has not accumulated any other delinquent debt. She currently drives a used, 12-year-old model car and lives within her means. (Tr. at 46-53, 63-66, 77; AE A at 8; AE D; AE E; AE G; AE H)

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 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

⁴ SOR ¶ 1.m.

⁵ SOR ¶¶ 1.d – 1.f (\$1,572), 1.n – 1.o (\$2,591), 1.q – 1.t (\$2,871). The delinquent utility bill to the same creditor referenced in both ¶ 1.f and ¶ 1.l are duplicates of the same debt.

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 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 favorable security decision. In resolving this ultimate question, 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).

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. Decisions regarding an applicant’s suitability 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

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 accumulation of a significant amount of debt, both medical and non-medical, 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."⁶ 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 are primarily due to matters beyond her control. Her eldest children's father and her husband abandoned their families, and left Applicant to meet the heavy financial obligation of raising four children on her own. They have not paid their court-ordered child support and Applicant's estranged husband wrongfully removed Applicant and her children from his health insurance. This left Applicant responsible for over \$7,000 in medical bills or more than one-third of the total debt listed on the SOR. However, AG ¶ 20(b) is not fully applicable because Applicant 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). She has reduced her expenses by moving to an area with a lower cost of living. She has resolved a number of other debts not listed on the SOR and has been paying the largest SOR debt on a consistent, monthly basis for the past 18 months. Applicant's past debts are primarily related to living expenses, such as utilities and phone service, not frivolous or reckless spending that would evidence a lack of self-control. Although Applicant has not satisfied all her SOR debts, she is addressing her past debts with the limited disposable income that she has available. Based on Applicant's 18-month track record of debt repayment and other concrete steps she has taken to address her debts, she established that her financial situation is in the process of being resolved. Applicant mitigated the financial considerations concern and demonstrated that the circumstances

⁶ 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).

that led to her financial trouble no longer casts 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).⁷ Applicant is a dependable, hard-working individual who has the full faith and trust of her employer. She has safeguarded and handled highly sensitive information without issue for the past seven years. She has raised four children on her own and placed their well-being above her own comfort, as evidenced by her recent move to a home that is nearly two hours away from her job. Such selflessness speaks volumes about 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 in any way to minimize her responsibility in resolving her financial situation. Applicant's past leaves me firmly convinced that she will discharge her security obligations in a responsible manner. Overall, the record evidence leaves me with no questions or doubts about Applicant's 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.t: 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 access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

⁷ 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.