



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-08727
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

January 15, 2013

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on April 28, 2011. (Government Exhibit 1.) On April 13, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 25, 2012, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on July 30, 2012. This case was assigned to me on August 24, 2012. DOHA issued a notice of hearing on September 4, 2012. I convened the hearing as scheduled on October 4, 2012. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on her own behalf, called one

additional witness, and submitted Applicant Exhibits A through E, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit F on October 24, 2012, which was admitted without objection. DOHA received the transcript (Tr.) of the hearing on October 11, 2012. The record closed on October 24, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant was 52 at the time of the hearing, and married. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admitted all the factual allegations in the SOR, except for subparagraph 1.n. Those admissions are findings of fact. She also submitted additional information to support her request for a security clearance.

Applicant and her husband were both employed in 2008, with a joint income of approximately \$98,000. Applicant's husband was laid off from his employment on November 6, 2008. Applicant was laid off from her employment on January 2, 2009. (Applicant Exhibit C.) Their income in 2009 dropped to \$36,000 and remained that way in 2010, primarily from unemployment benefits, as well as temporary employment. Applicant's husband remains unemployed and his benefits have run out. He is retired from his state National Guard, but is not yet eligible to receive retirement benefits. Applicant began working for her current employer in February 2011, first as a temporary employee, and then as a permanent employee. In 2011 their income was approximately \$42,000. (Tr. 62-65.) Applicant submitted an updated Personal Financial Statement at the hearing, which shows that she is able to maintain her current debts without difficulty. (Applicant Exhibit B.)

The SOR contains 14 past-due debts, totalling \$16,082. The existence of these debts is supported by credit reports concerning the Applicant dated May 11, 2011; February 13, 2012; June 26, 2012; and October 3, 2012. (Government Exhibits 2, 3, 5 and 7.)

As a result of the dual unemployment of Applicant and her husband for over two years, they were not able to maintain payments on their debts. Eventually, they decided to resolve the debts by filing for bankruptcy on April 13, 2012, with the help of a bankruptcy law firm. Applicant and her husband were granted a Discharge on July 23, 2012. (Applicant Exhibit D at 2.) The debts set forth in subparagraphs 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, and 1.j were specifically included in the bankruptcy Schedule F, "Creditors

Holding Unsecured Nonpriority Claims.” (Applicant Exhibit D at 3-9.) These debts, totalling \$12,128, were discharged by operation of law.

The status of the other debts set forth in the SOR is as follows:

1.a. Applicant admits owing this past-due medical debt identified only as medical account #30299912. This debt only appears on one credit report, that of February 13, 2012. (Government Exhibit 3.) A debt in this amount with this account number does not appear in the Applicant’s Schedule F. However, there are several medical accounts set forth in the Schedule F, in addition to the debts set forth in the SOR. (Tr. 57-59.) In addition, this debt does not appear on the most recent credit reports of the Applicant. Applicant retained an attorney, who represented her in this case. There does not appear to be fraud in this case, and Applicant is entitled to a discharge of all debts, whether this creditor received notice or not. This debt is discharged and resolved.

1.b. A state tax lien was filed against Applicant in January 2011 in the amount of \$2,360. This debt was released in August 2012, as shown in the credit report dated October 3, 2012. (Government Exhibit 7.) This debt is resolved.

1.k. Applicant admitted owing this past-due debt in the amount of \$50. Applicant stated in her Answer that this was the same debt as that set forth in 1.m, below, and was resolved by payment of \$68.35 on April 19, 2012. Attached to Applicant’s Answer was the email receipt from the creditor indicating that they received the payment. This debt is resolved.

1.l. Applicant admitted owing this past-due debt in the amount of \$102. Applicant stated in her Answer that this debt was resolved by payment of \$109.61 on April 19, 2012. Attached to Applicant’s Answer was the email receipt from the creditor indicating that they received the payment. This debt is resolved.

1.m. Applicant admitted owing this past-due debt in the amount of \$63. Applicant stated in her Answer that this was the same debt as that set forth in 1.k, above, and was resolved by payment of \$68.35 on April 19, 2012. Attached to Applicant’s Answer was the email receipt from the creditor indicating that they received the payment. This debt is resolved.

1.n. Applicant has consistently denied owing this past-due debt to an alarm company in the amount of \$942. (Answer.) According to Applicant, she cancelled the alarm service in the form required by the company, but they continued to bill her. (Government Exhibit 4 at 10.) Applicant stated that she had filed a dispute with the credit reporting services, as well as talking about the debt with the company several times. (Tr. 54-57, 60-61.) This debt only appears on the credit report dated May 11, 2011. (Government Exhibit 2.) Applicant retained an attorney, who represented her in the bankruptcy case. There does not appear to be fraud in this case, and Applicant is entitled to a discharge of all debts, whether this creditor received notice or not. This debt was either successfully disputed or is discharged and resolved.

Policies

Security clearance decisions are not made in a vacuum. 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 are to be used as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See *also* EO 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:

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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by her own admission, and supported by the documentary evidence, had over \$16,000 in past-due debt that was not resolved as of the date the SOR was issued. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. Her financial situation was caused by a tremendous drop in her income, due to Applicant and her husband both being laid off within two months of each other, and both being unemployed for two years. Applicant’s husband continues to be unemployed. There is no evidence of poor judgment on her part. Rather, she attempted to pay her debts until she saw the only solution was to file for bankruptcy protection. The relatively small amount of delinquent debt compared to the drastic reduction in family income over two years of unemployment, and her resolution of the debts after regaining employment, demonstrated that she acted responsibly under the circumstances.

Applicant has received financial counseling as required by the bankruptcy court. In addition, her current financial situation is stable. (Tr. 65.) I find that Applicant “has

received . . . counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Applicant and her husband finally made the decision to file bankruptcy after fighting to stay above water for two years. They have been properly discharged of their debts and have the tools to stay debt-free in the future. Accordingly, based on the particular facts of this case, I find that she has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Finally, the debt set forth in 1.n, even though not included in her Schedule F, is legally discharged. Applicant also has consistently denied this debt and contacted the creditor and credit reporting agencies about it. These actions bring her under the orbit of AG ¶ 20(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.”

Applicant has acted in a way that shows good judgment, making the best she could out of a very difficult situation. All of these mitigating conditions apply to the facts of this case. Guideline F is found for Applicant.

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 the relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant’s financial difficulties were not a result of poor judgment on her part. Rather, they were brought about by the unexpected loss of income by Applicant and her husband due to their both being laid off almost simultaneously. This difficult financial situation continued for two years. Under AG ¶ 2(a)(2), I have considered the facts of Applicant’s debt history. As stated above, this situation concerning the past-due debts are not indicative of her usual

conduct. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)). There is a low likelihood of recurrence because she resolved her delinquent debts and is currently living within her means. (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports granting her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.n: For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge