



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



In the matter of:)
)
) ISCR Case No. 11-09752
)
Applicant for Security Clearance)

Appearances

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

01/22/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On September 20, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 submitted a notarized response to the SOR on October 16, 2013, and requested a hearing before an administrative judge. The case was assigned to me on December 6, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 9, 2013, scheduling the hearing for January 6, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were

admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through Z, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE AA and BB and admitted without objection. Department Counsel's memorandum regarding the submission is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on January 14, 2014.

Findings of Fact

Applicant is a 49-year-old independent contractor. She held a security clearance in the past, but it lapsed when she was laid off from a job. Applicant was born in a foreign country and educated in another foreign country. She has the equivalent of a master's degree. She came to the United States in 1994, and she became a U.S. citizen in 2004. She is divorced, with two children, ages 21 and 13.¹

Applicant worked for a company from 2000 until the company lost a contract, and she was laid off in April 2009. She was unemployed until July 2010, when she was hired on a one-year contract. Her contract ended in July 2011, and she was again out of work. She was hired by a company in October 2011, where she worked until she was laid off in October 2012. She has remained unemployed since then. Applicant received an offer for employment as an independent contractor in February 2013. The contract will pay a significant annual salary. The company is sponsoring Applicant for a security clearance, but the contract is contingent upon her receiving her security clearance.²

Applicant had some financial difficulties after her divorce in 2007. She was able to stabilize her finances, but her periods of unemployment created additional financial problems. After her unemployment ended, Applicant worked to resolve her financial problems, and she paid some past-due bills. She attempted to pay her bills during her most recent unemployment. She receives unemployment compensation, but it is not enough for her to remain current on all of her accounts.³

The SOR alleges three delinquent debts, including a \$12,652 charged-off debt to a bank (SOR ¶ 1.a); a mortgage loan that was \$11,771 past due (SOR ¶ 1.b); and a \$2,286 past-due homeowners association debt (SOR ¶ 1.c). Applicant admitted owing the debts, and all of the debts appear on at least one credit report.⁴

The \$12,652 charged-off debt to a bank (SOR ¶ 1.a) became delinquent after Applicant's divorce. The balance on the account reached a high of \$24,689 in 2008. Applicant paid some of what she owed when her finances stabilized. The balance was \$19,217 in January 2010. The debt became delinquent again during a period of

¹ Tr. at 27-28, 40-41, 52-53, 56; GE 1, 5.

² Tr. at 27-36, 58; Applicant's response to SOR; GE 1, 5; AE H.

³ Tr. at 39-41, 49-52; Applicant's response to SOR; GE 1-3, 5; AE Q, S-V.

⁴ Applicant's response to SOR; GE 1-6.

unemployment. The balance was \$18,927 when the debt was charged off in March 2010. The balance was \$16,727 in April 2011. Applicant made a number of payments, and the balance was \$12,652 in July 2013. She credibly testified that she will pay all her debts, including this debt, after she returns to work.⁵

Applicant has first and second mortgage loans on her home. She maintained the payments on the first and second mortgage loans for as long as she could. She made the first mortgage loan payments until March 2013 and the second mortgage loan payments until June 2013. The first mortgage loan is past due more than \$11,000 (SOR ¶ 1.b). Her bank has been unwilling to modify the loans while she is unemployed. Applicant does not want to lose her home to foreclosure. She is confident that the bank will work with her on the loans after she returns to work.⁶

Applicant admitted owing \$2,286 to her homeowners association (SOR ¶ 1.c). She was sued by the homeowners association. The lawsuit was dismissed after Applicant and the attorney representing the homeowners association entered into a settlement agreement, stipulation of payments, and judgment in the event of failure to make the agreed payments. On January 10, 2014, the attorney for the homeowners association certified that Applicant was current under the agreement.⁷

Applicant has not received formal financial counseling. She has worked to rectify her financial problems in the past after periods of unemployment. She is committed to doing so again after she returns to work.⁸

Applicant submitted several letters praising her trustworthiness, work ethic, sincerity, dedication, morality, and honesty. The authors witnessed Applicant's financial problems related to her divorce and unemployment. They attested to Applicant's frugal lifestyle.⁹

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, 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

⁵ Tr. at 45-46, 54; Applicant's response to SOR; GE 1-6; AE A, N.

⁶ Tr. at 39-45, 55; Applicant's response to SOR; GE 2-6; AE C, Z.

⁷ Tr. at 46-49; Applicant's response to SOR; GE 3-6; AE B, BB.

⁸ Tr. at 53-55.

⁹ AE E, F, I, J, L.

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."

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 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.

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* 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable to pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (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.

Applicant's finances were adversely affected by her divorce and several periods of unemployment. Those events were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant rectified the financial problems brought on by her divorce, and her finances were stable until she became unemployed in 2009. Applicant documented her efforts to pay her debts when she went back to work after her two previous periods of unemployment. She did not shirk her financial responsibilities during her current unemployment. She paid her bills for as long as she was able. She is continuing to work with her creditors. Applicant has a contract to work as an independent contractor at a significant salary. She credibly testified that she will pay her debts once she is back to work.

I find that Applicant acted responsibly under the circumstances. Her financial problems occurred under circumstances that do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is applicable.¹⁰ AG ¶ 20(a) is not completely applicable because Applicant still has delinquent debts to be resolved.

¹⁰ The Appeal Board reversed an administrative judge's adverse decision in which the judge determined that AG ¶ 20(b) was applicable:

Applicant's challenge to the legal sufficiency of the Judge's decision is persuasive. The Judge found that Applicant's case satisfied the criteria of [AG ¶ 20(b)], in that Applicant's financial problems were due to causes largely beyond his control and that his response to

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 the 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 favorable character evidence, the factors that led to her financial problems, and her credible testimony that she will address all her financial issues after she returns to work. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)). Applicant has such a track record. After her divorce and two previous periods of unemployment, she took positive steps to correct her financial problems. I am convinced she will do so again after she returns to work.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

those problems had been reasonable. That finding is sustainable. Having so found, it is inconsistent for the Judge then to conclude that Applicant had nevertheless failed in meeting his burden of persuasion as to mitigation. The decision does not explain why, under the facts of this case, if Applicant had been reasonable in addressing problems rooted in causes beyond his control, the mere fact that it might take him a long time to complete the process was a reason to deny him a clearance.

ISCR Case No. 06-25584 at 3 (App. Bd. Apr. 4, 2008).

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.c:	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.

Edward W. Loughran
Administrative Judge