



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



In the matter of:)	
)	
)	ISCR Case No. 11-10794
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits in this case, I conclude that Applicant mitigated the Government’s security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is granted.

Statement of the Case

On March 1, 2011, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). On December 5, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD acted 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 within DOD for SORs issued after September 1, 2006.

On January 3, 2013, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge from the Defense Office of Hearings and

Appeals (DOHA). The case was assigned to me on February 7, 2013. I convened a hearing on March 13, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through Ex. 4 and entered in the record without objection. Applicant testified and called no witnesses. She introduced six exhibits, which were identified and marked as Applicant's Ex. A through Ex. F and entered in the record without objection. DOHA received the transcript (Tr.) of the hearing on March 20, 2013.

Findings of Fact

The SOR contains five allegations under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.e.). Applicant admitted four of the allegations (SOR ¶¶ 1.a., 1.b., 1.c., and 1.e.). She denied the allegation at SOR ¶ 1.d. Her admissions are entered as findings of fact.

Applicant is 45 years old, unmarried, and the mother of a 19-year-old son. Since February 2011, she has been employed as a security officer by a federal contractor, and she seeks a security clearance. (Ex. 1; Tr. 30, 34-36.)

In 1987 Applicant enlisted in the U.S. military. She served for eight years and received an honorable discharge in 1995. During her military service, Applicant held a security clearance. (Tr. 1; Tr. 36-38.)

Applicant earned a high school diploma in 1985. She attended college in 1989-1990 and 2007-2008. She believes she has earned about 32 credit hours. (Ex. 1; Tr. 30-31.)

Applicant's son is a first-year college student. She pays his tuition and helps him financially with some of his monthly expenses. (Tr. 41-42.)

Applicant purchased a home, secured by a mortgage loan, in approximately 2000. About one year later, Applicant refinanced with a different mortgage company. She remitted monthly required payments to the new holder of her mortgage loan. However, the funds Applicant remitted were misappropriated, and Applicant's account was not credited with her monthly payments. In 2003, she was informed that her failure to pay her mortgage loan had caused the creditor to foreclose on the property. Applicant filed a Chapter 13 bankruptcy in an attempt to stop the foreclosure process. Applicant's action stopped the foreclosure proceedings. The Chapter 13 bankruptcy was dismissed in August 2004. Applicant's 2003 Chapter 13 bankruptcy is alleged at SOR ¶ 1.b. (Ex. 2; Ex. 3; Tr. 42-46.)

Applicant continued to make timely mortgage payments to the creditor. Again the funds she sent to the mortgage creditor were misappropriated. However, in 2007, the mortgage company again informed her that her failure to make timely payments had caused the property to go into foreclosure. In March 2007, Applicant again filed a

Chapter 13 petition in an attempt to stop the foreclosure action. The bankruptcy did not stop the foreclosure action, and in September 2007, Applicant's Chapter 13 petition was dismissed. The home mortgage was foreclosed, and the property was sold in 2008. The sale of the home satisfied Applicant's indebtedness, and she owed nothing more to the creditor. Applicant's 2007 Chapter 13 bankruptcy is alleged at SOR ¶ 1.a. (Ex. 2; Ex. 3; Tr.46-49.)

The SOR alleges at ¶ 1.c. that Applicant is responsible for a \$4,212 delinquent debt in collection status. Applicant stated that the debt arose when she was laid off and unable to make required rental payments on the apartment she was leasing. At her hearing, Applicant provided documentation establishing that in December 2012 she had fully satisfied the debt. (Ex. 2; Ex. A; Ex. D; Tr. 49-51.)

The SOR alleges at ¶ 1.d. that Applicant was responsible for an unpaid \$11,417 account in collection status. Applicant explained that this was also a debt that arose when she was laid off again and unable to pay her rent. At her hearing, Applicant provided documentation corroborating settlement of the debt for \$5,709. She also provided a photocopy of a check, drawn on her credit union account, showing payment in full of the debt in December 2012. (Ex. 2; Ex. 4; Ex. A; Ex. E; Tr. 51-53.)

The SOR alleges at ¶ 1.e. that Applicant is responsible for a \$572 medical debt in collection status that has not been satisfied. At her hearing Applicant speculated that the debt was for podiatry treatments. She provided documentation corroborating her communication with the creditor, and she stated she had an agreement with the creditor to pay \$25 a month on the debt. She also provided a photocopy of the face of her personal check, dated March 12, 2013, remitting a first monthly installment payment of \$25 to the creditor. (Ex. B; Tr. 53-55.)

In October 2012, Applicant prepared a personal financial statement. At her hearing, she provided information that clarified the current status of her income and expenses. (Ex. 2; 39-42, 59-63.)

Applicant's monthly take-home pay is \$3,920.¹ She reported that her monthly expenses are as follows: rent, \$1,710; groceries, \$60; utilities, \$380; automobile expenses, \$543; life and other insurance, \$80; medical expenses, \$360; tuition for her son's college studies, \$514 (per month for approximately seven months); and supplementary assistance to her son of at least \$80 a month during the school year of seven months. (Ex. 2; Tr. 30-42.)

At her hearing, Applicant reported she had paid off an automobile loan listed on her personal financial statement. Monthly payments were \$500. She also reported that after satisfying her automobile loan debt, she had obtained a personal loan to pay off the debts alleged at SOR ¶¶ 1.c. and 1.d. Applicant's payments on the personal loan are \$361 a month for 60 months. When Applicant's expenses are calculated on a yearly

¹ Applicant's yearly take-home pay is \$47,040.

basis against her yearly take-home pay of \$47,040, she has a yearly net remainder of \$954. (Ex. 2; Ex. F; Tr. 60-64.)

Applicant had financial counseling at the time she filed for her 2007 Chapter 13 bankruptcy. She uses a written budget to plan and manage her monthly household expenses. She is current on all her financial obligations, including her state and federal income taxes. She has checking and savings accounts, and she has established a small retirement account. (Tr. 55-58.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no 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 Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 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 revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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 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 in seeking 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 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.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline 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 two potentially disqualifying conditions that could raise security concerns in this case. 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. The record in this case is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.”

(AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “the conditions that resulted in the financial problem were largely beyond the person’s control, [such as] loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence 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” (AG ¶ 20(c); that “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20(d)); that “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” (AG ¶ 20(e)); or that “the affluence resulted from a legal source of income” (AG ¶ 20(f)).

In 2000, Applicant purchased a home. After she refinanced her home loan in 2002, she timely filed her mortgage payments with the new creditor. However, the new mortgage holder misappropriated Applicant’s payments, and the home eventually fell into foreclosure. In order to prevent the foreclosures, Applicant filed for Chapter 13 bankruptcy protection in 2003 and 2007. Twice, when Applicant was laid off, she was unable to pay her rent, which gave rise to the debts alleged at SOR ¶¶ 1.c. and 1.d. At her hearing, Applicant provided documentation corroborating her good-faith efforts to satisfy these two debts as well as a \$572 medical debt. Applicant’s financial delinquencies occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. Accordingly I conclude that AG ¶ 20(a) applies to the facts of this case.

Applicant’s financial difficulties were the result of circumstances she could not control. However, she provided documentation showing that she acted responsibly under the circumstances. She took positive action to satisfy the three delinquent debts alleged on the SOR. I conclude AG ¶ 20(b) applies in this case and that Applicant followed a course of responsible conduct in the face of circumstances largely beyond her control.

The record reflects that Applicant had financial credit counseling in 2007. She testified that she follows a written budget in allocating her financial resources. Her current expenses permit very little discretionary spending, and she must watch her cash flow carefully if she wishes to avoid future delinquencies. Her personal financial statement and her testimony reflected her awareness of her need to use good judgment and prudence in the management of her income and financial responsibilities. At present, she lives within her means. The record reflects a consistent pattern of financial responsibility. I conclude that AG ¶¶ 20(c) and 20(d) apply to the facts of Applicant’s case and that it is very likely that she will avoid the recurrence of financial delinquency in the future.²

² I also conclude that AG ¶¶ 20(e) and 20(f) do not apply to the facts of this case.

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 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. Applicant is a resourceful and responsible person. As a single parent, she has raised her son alone and is helping him achieve a college education. Additionally, she served in the military for eight years, and she has worked hard to succeed in life. This is admirable.

Applicant is working to fulfill her personal and financial obligations. She now demonstrates good judgment, reliability, and trustworthiness. I conclude that she met her burden of persuasion in mitigating the Government's allegations under the financial considerations adjudicative 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.

Joan Caton Anthony
Administrative Judge