



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-14860
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: Timothy F. Sceviour, Esq.

10/05/2015

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On May 1, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. She had previously submitted two e-QIPs on which no action was taken because the initial company employing Applicant lost the supporting government contract. An investigation was conducted by the Office of Personnel Management (OPM), and Applicant was interviewed on July 1, 2014. After considering the results of the investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated January 31, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken 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 in the DOD on September 1, 2006.

Applicant answered the SOR on March 24, 2015, admitting the six financial allegations with explanation. Department Counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. DOD issued a notice of hearing on July 2, 2015, scheduling a hearing for July 31, 2015. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 5. Applicant testified and submitted 16 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through P. I received the transcript of the hearing (Tr.) on August 10, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 44 years old and has been employed as a ground safety analyst for a government contractor since 2011. She served on active duty in the Air Force from 1991 until 2003, and in the Air Force Reserves from 2003 until receiving an honorable discharge in 2005. Applicant married a fellow member of the Air Force in September 1993, and they divorced in June 2002. She married another Air Force member in June 2005, and they divorced in April 2010. She had a child with each of her husbands. (Tr. 11-12, 20-23; GX 1, e-QIP, dated April 29, 2014; AX A, Final Divorce Decree, dated April 1, 2010)

When Applicant divorced in 2010, she agreed that she would provide her husband \$3,000 to pay his debts. She also decided that she would move back to the area where she was raised and get support from her family. In actuality, her family did not provide her much meaningful support. Applicant used cash advances from a credit card to pay the \$3,000 owed her husband and the \$9,000 in moving expenses. Applicant could not find meaningful and profitable employment from April 2010 until July 2011. During this time, she did work at any small jobs she could find, and she received food assistance from her relatives in the area. She mainly subsisted on public assistance support payments for both her and her children, and a Department of Veterans Affairs (VA) disability payment. She had to use credit cards, as reflected in the debts noted in the SOR, to purchase necessary items for her and her children.

In July 2011, she was offered a position as a ground safety analyst by a government contractor. She moved from the area where she was to a new location. Shortly after starting work with the government contractor, the government contractor lost the support contract. Applicant was fortunately rehired by the new contractor. Shortly after commencing work on the contract, the new contractor learned they were incorrectly billing the government for work performed. To compensate, the government contractor cut Applicant's salary the equivalent of over \$11,000 per year reducing

Applicant's yearly salary of \$66,000 to \$55,000. Applicant's present net monthly income, which includes salary, support payments, and VA disability pay, is approximately \$3,700. Her expenses are approximately \$3,300 a month, leaving about \$300 in discretionary funds each month. In 2014, Applicant became sick and was out of work for 12 weeks. During the time, she was on sick leave and received only 66% of her normal pay. Applicant relied again on credit cards to supplement her income for purchasing necessities. (Tr. 23-25, 57-63; AX B, AX C, AX D)

Credit Reports (GX 3, dated January 23, 2013; GX 4, dated May 15, 2014; and GX 5, dated November 19, 2014), as well as Applicant's admissions in response to the SOR and her testimony at the hearing confirm the following delinquent debts a credit card debt charged off for \$12,353 (SOR 1.a); two credit card debts to the same creditor charged off for \$9,438 (SOR 1.b), and \$8,884 (SOR 1.c); another credit card debt charged off by a different bank creditor for \$6,968 (SOR 1.d); a bank credit card debt in collection for \$6,346 (SOR 1.e); and another credit card debt in collection for \$2,664 (SOR 1.f). Applicant's plan to resolve the debt was to pay her smaller debts first before moving to resolve the larger debts. She paid the smaller debts, leaving only the large credit card debts as delinquent. At one time, she considered bankruptcy but she never filed the required information.

The delinquent credit card at SOR 1.a was used to pay the \$3,000 Applicant was required to pay her husband after the divorce and the expenses when she moved after leaving active duty. The delinquent credit cards at SOR 1.b and 1.c were mainly used to purchase necessary items for Applicant and her children. Applicant tried to make payment arrangements for these debts, but the creditors wanted a significant payment she could not afford. Instead, the creditors, on their own initiative, forgave the debts and provided Applicant the appropriate IRS form 1099-c to report the forgiven debt as income on her tax return. Applicant included the amount forgiven for the debt at SOR 1.a on her 2013 tax return, and the amount forgiven for SOR 1.b and 1.c on her 2014 tax return. The taxes on the forgiven debts have been paid, and the debts are resolved. (Tr. 26-28, 39-42, 43-45; AX C, dated December 31, 2014; AX D, dated January 1, 2014; AX E, dated January 17, 2014)

Applicant has been in contact with the collection agency creditor holding the debts of \$6,968 at SOR 1.d, and \$6,346 at SOR 1.e. Applicant and the collection agency creditor were able to agree on a payment plan for each of the debts. The funds are automatically paid from Applicant's account. Applicant is current under the payment plans. (Tr. 29-31; AX F, Letter, dated February 6, 2015; AX G, Letter, dated July 23, 2015; AX H, Letter, dated April 13, 2015; AX I, Bank Statement, dated June 30, 2015)

The delinquent debt of \$2,664 is for a home improvement store credit card. Applicant has a payment plan of \$50 each pay period which is taken directly from her credit union account. The amount owed on this debt has been reduced to less than \$2,400. (Tr. 31-32; AX J, Letter, dated June 22, 2015; AX K, Bank Statement, dated June 30, 2015)

Applicant's performance reviews for calendar years 2013 and 2014 show an overall excellent performance rating of 5 out of 5. Applicant's program manager wrote that he has known Applicant for over two years, and she is a reliable and responsive employee. As an example of her being reliable and responsive, the program manager noted that Applicant was required to travel for the company shortly after she came on board. She had not received a company credit card, so the witness loaned Applicant \$1,000 with the understanding that Applicant would return the money shortly after returning. Applicant paid the funds back immediately after returning. (AX N, Letter, undated)

One of Applicant's friends wrote that Applicant is very positive and is committed to her children, church, and community. She is supportive, dependable, and trustworthy. (AX O, Letter, dated June 3, 2015)

Applicant's direct supervisor noted that he has known Applicant for the last three years, and she has been an excellent employee. She continually learns new skills to assist the customer and enhance her position in the company. She has exceptional character and consistently performs at a high level. (AX P, Letter, dated July 24, 2015)

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 must be considered 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.

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 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage his or her finances in such a way as to meet their financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant had financial difficulties after her second divorce and moving to a new location. She was unable to find good employment with sufficient income to care for herself and her two children. She received public assistance and had to rely on the use of credit cards to buy necessities. She incurred delinquent debt later when her salary was cut by her DOD contractor employer because of their mistake in billing the government under the contract. Applicant’s history of

delinquent debts is documented in her credit reports and her testimony at the hearing. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

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

These mitigating conditions apply. Applicant incurred delinquent debt from her second divorce and moving to be near her family for support. She did not immediately find financially sound employment and incurred debt. After a year, she found good employment with a defense contractor, but her employer cut her salary to make up for their billing mistake. These conditions that led to her delinquent debt were beyond her control and are unlikely to recur. She acted responsibly towards her debts by contacting her creditors, paying her smaller debts, and attempting to negotiate payment plans for her remaining credit card debts. Three of the debts were forgiven by the creditors, and she is current with negotiated payment plans on the remaining three debts. While Applicant did not present evidence of financial counseling, she is resolving her debts, and they are under control.

Applicant established her good-faith initiative to pay her debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to

implement that plan. Applicant established a meaningful track record of debt payment. She paid and resolved some small debts. Three of the debts were forgiven by the creditors who provided Applicant with the required tax form to report the forgiven debts as income on her tax returns. While the forgiving of the debts is not actually payment of the debts by Applicant, the debts are resolved. Applicant's good-faith effort was in taking the action she was required to take in reporting the forgiven debts as income and paying the taxes on the forgiven debts. She is current with payment plans for the remaining three debts. Applicant has shown that she acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards her finances.

Applicant has shown that she is managing her personal financial obligations reasonably and responsibly, and her financial problems are being resolved. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered the views of Applicant's friend and supervisor and her excellent job performance. Three of Applicant's delinquent debts have been forgiven by the creditors, and she paid the taxes on the forgiven debts. She is current with payment plans for the three remaining debts. This information shows Applicant's responsible management of her finances. Applicant presented sufficient information to establish that she is acting reasonably and responsibly towards her finances, and that she will continue to responsibly manage her financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and

suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.f: 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.

THOMAS M. CREAN
Administrative Judge