



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-01100
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

May 9, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing six delinquent debts totaling \$62,974.47. Applicant has resolved three of her delinquent accounts. She is making payments on a fourth debt. She plans to address the remaining delinquent accounts, totaling \$14,038.47, when the funds become available. She has worked diligently to address her delinquent accounts since becoming employed in 2010, after a long period of unemployment and underemployment. She can be trusted to continue to resolve all of her indebtedness. Based on a review of the testimony, pleadings, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 24, 2011. On November 20, 2012, the Department of Defense issued an SOR to Applicant, detailing 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 effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on December 22, 2012. In her Answer, she requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to another administrative judge on February 15, 2013, and was reassigned to me on March 25, 2013. DOHA issued a Notice of Hearing on March 29, 2013, scheduling the hearing for April 22, 2013. The hearing was convened as scheduled by video teleconference. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through V, which were admitted without objection. Applicant testified on her own behalf. The record was left open until May 2, 2013, for the receipt of additional documentation. On April 26 and 30, 2013, Applicant presented additional exhibits, marked AE W through AE X. Department Counsel had no objections and they were admitted into evidence as identified. Department Counsel presented one additional exhibit, marked GE 7, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 30, 2013.

Findings of Fact

Applicant is a 49-year-old government contractor. She has worked for her current employer since August 2010. She attended community college from August 2005 to November 2008, but did not receive a degree. She is divorced and has one adult child. (GE 1; Tr. 57-58.)

The Government alleged that Applicant is ineligible for a clearance because she has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information. The SOR identified six delinquent debts totaling \$62,974.47. Applicant admitted each of the debts in her Answer, with explanations. (Answer.) Her debts are as follows:

Applicant is indebted on a delinquent account in the amount of \$47,121 (as alleged in SOR ¶ 1.a). Applicant testified that she attempted to negotiate a settlement with this creditor for years. On March 7, 2013, she received a written settlement agreement from this creditor. She agreed to pay \$1,000 on March 31, 2013, and make \$200 per month payments for 125 months beginning April 30, 2013. Applicant presented copies of cancelled checks showing she paid this creditor \$1,000 on March 22, 2013 and \$200 on April 12, 2013. Applicant is addressing this debt. (AE V; AE X; Tr. 39-42, 51.)

Applicant was indebted on a delinquent medical account in the amount of \$1,447 (as alleged in SOR ¶ 1.b). This debt was for post-operative physical therapy that Applicant believed would be covered by insurance. Applicant satisfied this debt on February 21, 2013, as evidenced by her bank statement. Applicant's most recent credit report also reflects that this debt was satisfied. (GE 7; AE T; Tr. 42.)

Applicant is indebted on a delinquent collection account in the amount of \$10,077.47 (as alleged in SOR ¶ 1.c). This debt was for a credit card. Applicant plans to contact the collection agent for this account after she has satisfied some of her other delinquent accounts. She testified she does not currently have the disposable income to address this debt. This debt is unresolved. (Tr. 42.)

Applicant was indebted on a delinquent collections account for cable television services in the amount of \$228 (as alleged in SOR ¶ 1.d). Applicant provided a receipt from this creditor showing that on April 23, 2013, this debt was paid in full. (AE X; Tr. 43-44, 52.)

Applicant was indebted on a delinquent medical account in the amount of \$140 (as alleged in SOR ¶ 1.e). Applicant testified that she paid this debt. She presented a letter from the creditor, dated April 8, 2013, which indicated the delinquency would be deleted from her credit report. This debt is resolved. (AE W; Tr. 44-45.)

Applicant is indebted on a delinquent account in the amount of \$3,961 (as alleged in SOR ¶ 1.f). She testified that she had not yet addressed this debt. This debt is unresolved. (Tr. 45.)

Applicant attributed the delinquent debts to a period of unemployment from April 2008 through June 2009. She documented that prior to her unemployment, she had excellent credit, although she had high balances on some accounts. She was able to maintain payments on all debts. In April 2008, Applicant accepted an "Enhanced Surplus-Reduction Offer (ESRO)" from her employer, after ten years of service, because her position was eliminated. Her employer offered Applicant the option to move out of state to keep her job, but she elected to accept the ESRO because she owned two local properties, including her residence and one rental property. At the time she accepted the ESRO, she was making approximately \$84,000 in wages annually. She received a lump-sum payout of approximately \$46,158.59. She filed for unemployment in May 2008. She supported herself with her savings and unemployment compensation while she was unemployed. She attempted to find work, to no avail. She began struggling to make her mortgage payments and pay monthly bills. Additionally, she incurred unexpected expenses when her mother and pets became ill. (AE A; AE B; AE C; Tr. 35-36.)

In September 2008 Applicant underwent foot surgery, which was covered by her insurance. After the surgery, she required physical therapy. Her doctor told her the physical therapy would be covered under continuation of care, although her health insurance had lapsed. However, the insurance company refused the claim and the account was placed for collections (as alleged in SOR ¶ 1.b). This medical procedure and post-operative care hindered Applicant's ability to get another job and repay her bills. (AE D.)

Applicant testified that she worked to resolve her mortgage debt first. She presented evidence that she attempted to refinance her properties three times, but was

unable to do so. The value of the properties had declined and her mortgages exceeded the properties' value. Her realtor, who wrote a letter in support of Applicant, advised her to sell the properties. She was able to short sell one of her properties in 2009. She short sold her other property in 2011.(AE J; AE K; AE O.)

In June 2009, Applicant started a small business to try to earn an income. She worked at the business until the fall of 2010, when she closed it because she was unable to make it profitable. (GE 2; AE F; AE G; Tr. 36, 49.)

Applicant was hired by a government contractor in August 2010. Applicant explained that she has been paying off her creditors as funds were available, since she began employment with the government contractor. She presented documentation that showed she had numerous other delinquent accounts that she resolved since 2010. (GE 1; GE 2; AE H; AE P; AE Q; Tr. 38.) She testified:

I just want to say that I am doing the best I can to pay off all this back debt as well as trying to stay current on the debts that happen every day in day to day life. Obviously, as it took me well over 10 years to accumulate it, it's a little unreasonable to be able to pay it all off in two years so I'm doing the best I can. And I will continue to do the best I can. (Tr. 46.)

Applicant's income, as stated in her 2012 Federal income tax return, was \$78,554. She testified that she has a net remainder of approximately \$340 per month after expenses, which she uses to satisfy her delinquent accounts. She no longer has credit cards. (GE 2; AE R; Tr. 53-56.)

Applicant is respected by her friends who wrote letters on her behalf. They indicate Applicant is honest and reliable. She was awarded two certificates from her employer in recognition of her productivity and self sacrifice. (AE S; AE X.)

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant was unable or unwilling to resolve a large amount of delinquent debt that began accumulating in 2008. The evidence supports the application of AG ¶¶ 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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.

A security clearance adjudication is not a debt collection procedure. It is a process designed to evaluate an applicant's judgment, reliability, and trustworthiness.¹ An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first.²

Applicant's financial difficulties began in 2008 as the result of her unemployment. Her financial situation was exacerbated by foot surgery, and illness of her mother and pets. These were circumstances beyond her control. She was unable to find employment and tried to start her own business to support herself. The business was not profitable and she fell further into debt. She finally was able to secure employment in 2010. Since that time, she has addressed numerous delinquent accounts, one by one. Applicant's financial problems were largely caused by factors beyond her control and she has acted responsibly under the circumstances. She developed a plan to work with her creditors, as her funds allowed, to repay her debts.

¹See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

²See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has resolved three SOR-listed delinquent accounts. She is making payments on a fourth debt. She plans to address the remaining delinquent accounts, totaling \$14,038.47, when she has money available. Applicant testified that she is doing the best she can with a limited income to repay the debts. She intends to continue making payments on her debts until they are all satisfied. She is incurring no new debt and has no credit cards. She is living within her means.

Applicant has made a good-faith effort to pay four of her debts. AG ¶ 20 (d) is applicable concerning SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. She does not receive full mitigation under AG ¶ 20 (d) because she has not recently contacted the creditors in SOR ¶¶ 1.c and 1.f, and is not making payments on these accounts. However, Applicant has sufficiently managed her finances to convince me that there are clear indications that her financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. She plans to pay the debts in ¶¶ 1.c and 1.f when she has the funds to do so. Her history of working diligently since 2010 to pay her delinquent accounts, along with her reputation for honesty and integrity, indicates that she will fulfill this promise. AG ¶¶ 20 (a), 20 (b), and 20 (c) are applicable.

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 pertinent facts and circumstances surrounding this case. Applicant is highly respected by those who know and work with her. Applicant was honest and candid about her finances. Before receiving the SOR, Applicant was acting responsibly to resolve her debts. As indicated above, an applicant is not required to establish that she has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan.

Applicant has responsibly resolved most of her financial problems and demonstrated a commitment to resolving those that remain outstanding. She has sufficient income to avoid financial problems in the future. Her finances do not constitute a security concern.

Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations.

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

Subparagraph 1.a through 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.

JENNIFER I. GOLDSTEIN
Administrative Judge