



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 12-02941
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant borrowed money from her retirement fund and incurred a tax debt on which she is making payments in accord with a repayment agreement. She is also repaying a charged-off account and a truck debt. She is negotiating with the remaining creditor to establish a repayment plan. She has resolved the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on September 18, 2013, the DoD issued an SOR detailing financial considerations security concerns. DoD

¹ 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 the DoD on September 1, 2006.

adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On November 5, 2013, Applicant answered the SOR and requested a hearing. On December 19, 2013, I was assigned the case. On December 31, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on January 15, 2014. I admitted Government's Exhibits (Ex.) 1 through 4 and Applicant's Exhibit A, without objection. Applicant testified at the hearing.

The record was held open to allow Applicant to submit additional information. On February 28, 2014, additional material (Ex. B through S) was submitted and admitted into the record without objection. On January 24, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the factual allegations in the SOR. Her admissions are incorporated herein. After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 43-year-old software engineer and section manager who has worked for a defense contractor since April 2000, and seeks to maintain a top secret security clearance. (Tr. 21) At the hearing, she stated her annual salary is approximately \$130,000. (Tr. 35) As of August 2013, her monthly gross income is \$9,600 with \$3,300 in monthly deduction, which leaves a monthly net remainder of \$6,300. (Ex. 3) As of August 2013, her monthly gross salary had increased to \$10,800. Her net monthly income was approximately \$6,900 and her monthly expenses and debt payments were approximately \$5,900, which left a monthly remainder of approximately \$1,000. (Ex. 3)

Following the hearing, Applicant provided a personal financial statement indicating her monthly gross income is \$7,124, which is \$85,500 annually. (Ex. P) Her monthly net remainder (monthly income less monthly expenses and debt payment) is \$2,538. (Ex. P) Applicant is making two monthly payments to the creditor listed in SOR 1.d (\$1,166): \$20 on a balance of \$970 (Ex. H) and \$15 monthly on a balance of \$461. (Ex. M)

Applicant's performance evaluations state she takes the initiative and makes things happen, she is pro-active, and motivated. Her work performance is outstanding, she is enthusiastic, results/goals oriented, and a self-starter. (Ex. C, E) From February 1993 through December 1996, Applicant was a computer programmer in the United States Air Force. (Ex. S, Tr. 22) She was honorably discharged as a sergeant (E-5). She was motivated to join the military by the college assistance that was offered. (Tr. 39) She was awarded the Air Force Achievement Medal while on active duty. (Ex. S)

In October 1998, Applicant married and in April 2009 divorced having separated from her husband in 2008. She has three children ages 12, 15, and 23. In 2002, Applicant's youngest child, then less than a year old, was severely injured by a

caregiver. The child was assaulted, battered, and severely and violently shaken when he was staying with his aunt. His aunt's fiancé committed the act. (Tr. 22) The child had three fractured ribs and subdural hematoma, which caused seizures. (Ex. 3) The boyfriend was charged with second degree felony injury to a child and assault. (Ex. 3)

Following the injury to Applicant's son, her husband became a stay-at-home father to care for him. (Tr. 23) The loss of her husband's income caused financial problems, as did her son's medical costs not paid by insurance. In November 2002, Applicant filed for bankruptcy (SOR 1.a). Following the bankruptcy, she reaffirmed the debt on two vehicles, making \$285 and \$700 monthly payment on the vehicle until they were paid. (Ex. 3)

In April 2009, Applicant's then husband was temporarily awarded possession of their rental property and truck. (Tr. 26) Although the home was rented for \$925 monthly, her then husband failed to make the \$720 monthly mortgage payments. (Ex. 3, Tr. 27) The home went to foreclosure and the truck was repossessed. (Tr. 26) For the past year, Applicant has been making \$100 monthly payments to the creditor on the truck debt. (Ex. F, Tr. 27, 53)

Applicant owed federal income tax for tax years 2006, 2008, and 2009 (SOR 1.c). All of her tax returns were filed in a timely manner. (Tr. 54) She lives in a state that does not have a state income tax. With her husband not working, she borrowed from her 401(k) retirement plan to pay living expenses. (Tr. 24) This resulted in additional tax because the money borrowed was treated as income and she also incurred a penalty on the funds because she was not age 59 ½. (Tr. 25) She owed \$2,600 for 2008 and \$1,104 for 2009. In 2010, she was due a \$700 refund and in 2011, she was due a \$1,346 refund. (Ex. 3) Her refunds were intercepted and applied to the tax owed from previous years.

In February 2010, the Internal Revenue Service (IRS) entered a \$9,893 tax lien (SOR 1.b) against Applicant. In 2008, she began making \$160 monthly payments to the IRS. In 2010, she had to discontinue the payments because of insufficient funds. (Ex. 3) At some point in 2010, she resumed payments and increased the monthly payments to \$170. (Ex. 3) Applicant currently makes \$100 monthly payments to the IRS. (Ex. A, L) As of December 2013, she had reduced her federal income tax debt to approximately \$5,500. (Tr. 35) She owed \$782 for tax year 2006, \$3,474 for tax year 2008, and \$1,219 for tax year 2009. (Ex. A)

Applicant had a \$1,166 charged-off credit card debt (SOR 1.d) that has now been paid. (SOR Response) As of August 2013, she had paid approximately \$6,300 on the account. (Ex. 3) In July 2008, Applicant obtained a \$5,000 loan for household expenses. (Ex. 3) She was unable to make her \$168 monthly payments and the \$4,244 account (SOR 1.e) was placed for collection. (Ex. 3) She has been communicating with the creditor to establish a repayment plan. She experienced some difficulty in that the creditor told her the account had been transferred to a collection agency and the collection agency said the debt was with the original creditor. Once it was established

the original creditor had the debt, Applicant asked the creditor to reestablish her on-line account so she could make automatic \$100 monthly payments. (Ex. B, Tr. 29)

Applicant makes the following monthly payments on her credit cards and other accounts: \$81 (\$1,651 balance, Ex. I), \$89 (zero balance, Ex. J), \$68 (\$3,008 balance, Ex. K), \$40 (\$1,568 balance, Ex. N), and \$142 (\$3,306 balance, Ex. O). She drives a 2001 automobile and has no car payments. (Tr. 36, 51) She has arranged with all but one of her creditors to make monthly payments that would pay her obligations in full. (Tr. 31) As previously stated, she is working with the remaining creditor to establish a repayment plan. (Tr. 29)

As of December 2013, Applicant had \$16,000 in her 401(k) retirement plan. (Ex. 3, Ex. R, Tr. 49) She has two loans from the plan that are repaid automatically from her paycheck. (Tr. 49) Applicant's three children, her oldest son's two children, her sister, and her niece live with her. (Tr. 36) She also has guardianship of her great nephew. (Tr. 37) She made her last \$400 monthly car payment in November 2013. (Tr. 51) She is current on her credit cards accounts. (Ex. H-P) She maintains a detailed budget. (Ex. B, Tr. 57) Eight years ago, she purchased her home for \$170,000. (Tr. 59) She is current on her mortgage, which is paid by automatic deduction. (Tr. 59, 60) She pays \$1,355 monthly on a balance of approximately \$153,000. (Ex. G) The home's fair market value is approximately \$165,000. (Ex. P)

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 interests of 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 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 Executive Order (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. In 2002, Applicant sought bankruptcy protection. In 2010, a tax lien of approximately \$10,000 was entered against

her. She had one charged-off account and one collection account. AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

In 2002, when Applicant's son was less than a year old, he was the victim of an assault that left him with three broken ribs and other injuries that caused seizures. Applicant's husband chose to remain at home to care for the child. The loss of her husband's income and the medical expenses resulted in her having to file bankruptcy. I do not find any fault in how and why this bankruptcy occurred.

Without Applicant's husband's income, Applicant took money from her 401(k) retirement plan to pay daily living expenses. This withdrawal of funds resulted in additional taxes and penalty. In February 2010, the IRS entered a tax lien for tax years 2006, 2008, and 2009. Applicant is making \$100 monthly payments to the IRS to address her tax bill. As of December 2013, she had reduced her federal income tax debt to approximately \$5,500. She is making payments on the charged-off account (SOR 1.d, \$1,166) and on a repossessed truck not listed in the SOR.

Applicant is communicating with the creditor of the remaining collection account (SOR 1.e, \$4,244) to establish a repayment plan. Her on-line account with the creditor is being reestablished so she can begin making \$100 monthly payments on the debt.

With her monthly net remainder of approximately \$2,500, she should have no difficulty making this monthly payment.

Applicant's bankruptcy filing occurred more than 11 years ago and the most recent tax year for which taxes are owed was 2009, approximately five years ago. These events are not recent and involve circumstances beyond her control. She has acted responsibly in addressing her debts. She has not received financial counseling, but arranged a repayment plan with the IRS and the creditor of her charged-off account. She is currently negotiating a repayment agreement on the remaining delinquent debt. She has demonstrated that her financial problems are under control.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by the injury to her son and her husband's decision to stay home to care for the child. It is unlikely she will again incur financial problems due to such events. AG ¶ 20(a) applies. Under AG ¶ 20(b), Applicant experienced unexpected medical expenses, the loss of her husband's income, separation, and divorce, along with the financial burden associated with each. These are events beyond her control and she has acted responsibly. AG ¶ 20(b) applies.

Under AG ¶ 20 (c) and ¶ 20 (d), there are clear indications Applicant's financial problems are under control. Additionally, she is making monthly payments to the IRS, to the creditor of the charged-off account, and on the repossessed truck debt not listed in the SOR. These are good faith efforts to repay her delinquent debts. Based on her actions in establishing repayment agreements with her other creditors, I believe she will resolve her sole remaining delinquent account.

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. The debts incurred were not the type that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. The taxes were incurred when she borrowed money from her retirement account to pay daily living expenses. The money was not spent frivolously. She is not living beyond her means. She drives a 2001 automobile. In addition to caring for and being financially responsible for herself and her three children, she is also caring for her oldest son's two children, her sister, and her niece.

The issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge