



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



In the matter of:)
)
) ISCR Case No. 14-00325
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2014

Decision

MASON Paul J., Administrative Judge:

In the 14-year-period that Applicant was married to her first husband, she and three of her four children had to endure steady physical and mental abuse. A 2010 criminal investigation led to her husband's conviction for very serious sexual crimes and at least a 20-year sentence in September 2012. During the criminal investigation, the state's district attorney informed Applicant that the examinations and treatment caused by the abuse would be paid by the state's witness protection program. Twelve of the 17 listed delinquent accounts are connected to the examinations she received during the investigation. While an applicant's promises to resolve debts in the future are generally not mitigating, under the unique circumstances of this case, I am confident that Applicant will be proactive and aggressively address the twelve delinquent medical accounts and five other obligations in a responsible manner. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP), Government's exhibit (GE) 1, on August 26, 2013. She was interviewed by an investigator from the Office of Personnel Management (OPM) on September 19, 2013. (GE 2)

On March 4, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline (Guideline F). The action was taken pursuant to 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant's answer to the SOR was notarized on April 2, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 13, 2014, for a hearing on June 6, 2014. The hearing was held as scheduled. GE 1-GE 4 and Applicant's exhibits (AE A and B) were admitted in evidence without objection. Applicant testified. Her two post-hearing submissions were admitted into the record without objection. AE C represents her closing statement. AE D is a character statement from a friend and former coworker. The transcript (Tr.) was received on June 16, 2014. The record closed on June 23, 2014.

Findings of Fact

Twelve of the seventeen accounts alleged in the SOR are medical bills. Four of the 12 medical accounts became judgments between 2010 and March 2013. The other five accounts represent a judgment for unpaid rent totaling \$1,600 (SOR 1.e), a charged-off auto installment loan in the amount of \$13,892 (SOR 1.f), a credit card account (\$99) that was past due by 30 days (1.g), an auto insurance premium (\$348) in collection (1.k), and a delinquent cable account (\$338) in collection (SOR 1.l). Applicant admitted all accounts except SOR 1.h, 1.i, and 1.j. She subsequently learned that the three accounts totaling \$752 are additional medical accounts that she believes will be paid by the state's witness protection program. (AE C) The entire list of accounts, which total \$19,620, became delinquent between 2009 and 2013. The installment loan (SOR 1.f) represents more than 50% of Applicant's total debt. She intends to make the necessary arrangements to satisfy all delinquent accounts.

Applicant is 39 years old. She was married to her first husband from September 1996 to July 2013. She has four children, two sons and two daughters, from that marriage. Their ages range from 16 to five. She remarried in August 2013 and is seven months pregnant.

Applicant's associates degree in June 2002 and bachelor's degree in September 2008, were both in computer information systems. In December 2010, she obtained a master's degree in business administration. (GE 1 at 12; Tr. 56)

From March 1999 to April 2007, Applicant was employed as a project planner by a defense contractor. Following an 11-month layoff, she returned to work for her employer as a program manager from November 2008 to May 2013, when she was laid off again. From August 2013 to the present, Applicant has been employed as a program scheduler by her employer. During her three periods of unemployment, Applicant supported her family with her severance pay while searching for employment. Applicant has no criminal record and has never been involved in an offense involving alcohol or drugs. (GE 1 at 13-16, 27-30; GE 2 at 1)

Background for Financial Problems

Throughout Applicant's first marriage, her husband was physically and mentally abusive to the family. He was an alcoholic who did not like rules. The primary reasons for the family's financial problems were her husband's refusal to let Applicant participate in managing the family finances and his resistance to paying family debts. Applicant was denied a security clearance in approximately February 2001 because of the family's financial problems. The December 2010 judgment for unpaid rent (SOR 1.e) was filed against Applicant because of her husband's refusal to comply with the rental association's rule against keeping live chickens on rental property. She noted in her e-QIP that she had made an unspecified number of monthly payments of \$100 to the landlord, though copies of canceled checks were no longer available. (GE 1 at 30, 32-33; GE 2 at 2-19; AE C; Tr. 22, 27-29)

In 2010, the state launched a criminal investigation against Applicant's husband for the continuing physical and mental abuse. Being a state witness as well as a victim of the crimes, e.g., forcible sodomy, object penetration, Applicant underwent physical and mental examinations and tests to determine the extent of damage to her body and mind. She received treatment. At the beginning of the investigation, she was advised by the state's attorney that her medical bills would be paid by the state's witness protection program. The medical bills cited at SOR 1.a-1.d, 1.h-1.j, and 1.m-1.q, have not been paid. SOR 1.a-1.d became judgments because the state's witness protection program accepts only original bills generated by the hospitals where Applicant was examined or treated. She resolved an unlisted medical account after collection. (GE 2 at 2-19; GE 3 at 10; AE B; Tr. 21-22, 25, 36-37)

In July 2011, when Applicant's former husband moved the family into a trailer with no utilities, the physical and mental abuse continued. Applicant recalled sustaining facial bruises after she was hurled from one side of the trailer to the other. When her coworkers

saw her bruises the next day, their offers of support influenced her to escape with her children two days later. She had not attempted to flee the abusive relationship earlier because of her intense belief that her husband would find her, regardless of where she sought safety. Her friends and coworkers helped her escape and go into hiding at a motel. In August 2011, her husband was arrested for assaulting another woman whom Applicant knew. On September 20, 2012, her husband plead guilty to forcible sodomy, malicious wounding, abducting a person with intent to defile, and object penetration. He received suspended sentences for all the offenses except for the intent to defile offense, which he received a 20-year sentence (60-year sentence with 40 years suspended). On July 24, 2014, he is scheduled to appear in court for continuing to contact the victim (Applicant), a violation of one of the terms of his September 2014 suspended sentences. (AE B; Tr. 37-39, 41, 46-47)

The family's escape was beneficial to Applicant's children because they were freed from the husband's inadequate attempt to home school them. After he was arrested, Applicant enrolled the children in public school. (Tr. 42-43) Concerning the effect of the abuse on Applicant's children, the three oldest had extensive counseling. Her 16-year-old son attended a military school where he received focused counseling and therapy. The cost was paid by the state's witness protection program. The son completed the military school and is currently doing very well in public school. Her 12-year-old-daughter, who had trust issues with males, has received counseling and is demonstrating considerable improvement. Applicant's eight-year-old son had communication problems when the family escaped. Afterwards, he received speech and language therapy. He continues to receive extensive speech therapy so that he can proceed into his appropriate grade level. Applicant's five-year-old daughter was too young to remember the ordeal and is doing fine. (Tr. 40-43)

Because she needed better transportation for her children, Applicant purchased a reliable used car (SOR 1.f) in early 2013, and made four monthly payments on the car. She was unaware that she would be laid off in May 2013. After the lay off, she could not continue installment payments and returned the car to the dealer. She intends to make payment arrangements to satisfy the debt. (GE 3 at 11; Tr. 23, 30-31, 49-51)

Character Evidence

Applicant submitted two character statements. A manager of the sustainment support division of her employer wrote on June 3, 2014, that Applicant joined his team in early 2000 as an office manager and administrator. She provided valuable services to the government customer. She received additional responsibility as a budget analyst and program manager on an expanding project. However, the project expired when the government contract ended. As soon as a position opened within the manager's current program, he brought Applicant back to work on facets of the program. (AE A)

In an undated character endorsement, a former worker and friend indicated that he has known Applicant for 14 years. She has always demonstrated her security consciousness. The friend recalled Applicant receiving a company award for her job performance while assigned as a program manager. The friend considers Applicant to be a trustworthy person. (AE D)

In her closing statement, Applicant reiterated the abuse and violence she endured for more than 14 years. She also mentioned her accomplishments since she started working for her employer in 1999. She intends to contact a financial counselor to tackle her outstanding debt. She also can rely on her course work in accounting to help her regain control over her finances. (AE C; Tr. 56)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. 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 the potential, rather than actual, risk of compromise of classified information.

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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant him a security clearance.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

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

Applicant is unable to satisfy 17 medical and commercial debts totaling \$19,620, which became delinquent between 2009 and 2013. AG ¶¶ 19(a) and 19(c) apply.

The mitigating conditions under AG ¶ 20 that are potentially pertinent are:

- (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 reliability, trustworthiness, and good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control 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.

Two medical accounts became delinquent in 2009 and four medical accounts became judgments between 2010 and 2013. While all the delinquent accounts are still outstanding, the accumulation of these debts occurred under circumstances that are unlikely to be repeated. With the help of coworkers, Applicant and her family finally escaped from her husband in July 2011. He was incarcerated in August 2011. She officially divorced him in July 2013. With treatment, she and three of her children are slowly putting their lives back in order. Applicant receives limited mitigation under AG ¶ 20(a).

As Applicant stated several times in her interview summary which she reiterated at the hearing, her former husband inflicted continuous physical and mental abuse on her during their 14-year-marriage. I find her testimony credible. The husband refused to give

Applicant financial responsibilities, was averse to paying bills, and did not like following rules. The constant abuse prevented Applicant from acting responsibly under the circumstances until she and her family got away from her husband in July 2011. Applicant receives limited mitigation under AG ¶ 20(b).

AG ¶¶ 20(c) and 20(d) do not apply because Applicant does not have control over her financial problems since she has not taken any action to resolve the listed debts.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 39 years old and has four children, ages 16 to five. She is expecting the birth of her fifth child. Between 2002 and 2011, she received two degrees in computer information systems and a master's degree in business administration. Based on Applicant's commendable job performance record, the manager of the sustainment support division of her employer rehired her to develop key components of his current program. Applicant's friend and former coworker considers Applicant to be a trustworthy person.

Between 2009 and 2013, Applicant incurred \$19,620 in listed delinquent debts. Twelve of those debts are medical bills for physical and mental abuse that Applicant had to endure for more than 14 years. Almost three years after she and her children escaped in July 2011, Applicant and three of her four children are still recovering from the abuse. The state's attorney advised Applicant that the bills would be paid by the state's witness protection program. She must intensify her efforts to ensure the providers submit the proper documentation for payment.

It is fair to conclude that Applicant demonstrated irresponsibility and poor judgment when she purchased a car in early 2013, rather than addressing other delinquent obligations that she knew she had. On the other hand, she testified credibly that she needed a more reliable car that could accommodate her four children. She exercised some good judgment by purchasing a used rather than a new car. She returned the car when she could no longer afford the payments, and, as she had done during two previous layoffs, used the severance pay to support her children while searching for employment. Having weighed and balanced the entire record, I am confident Applicant will implement the same good judgment in resolving her financial delinquencies that she has demonstrated in her job performance since 2000. Considering the specific disqualifying and mitigating conditions in the context of the general factors of the whole-person concept, Applicant mitigated the security concerns triggered by the financial considerations 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-q: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge