



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05904

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

05/31/2017

Decision

HOWE, Philip S., Administrative Judge:

On October 3, 2014, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On June 16, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 12, 2016, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) received the request on July 25, 2016. Department Counsel was prepared to proceed on September 26, 2016, and I received the case assignment on October 6 2016. DOHA issued a Notice of Hearing on November 21, 2016, and I convened the hearing as scheduled on December 29, 2016. The Government offered Exhibits 1

through 7, which were received without objection. Applicant testified and submitted Exhibits A through H, without objection. DOHA received the transcript of the hearing (Tr.) on January 10, 2017. I granted Applicant's request to keep the record open until January 31, 2017, to submit additional information. On January 31, 2017, she submitted Exhibits I to K, without objection. The record closed on January 31, 2017. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted all factual allegations in Paragraph 1 of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

Applicant is 35 years old and has a bachelor's degree in criminal justice granted in 2008. She is married and has a daughter. She is an assistant security officer for a defense contractor and has been for two years. She has worked for her employer for the past seven years. Applicant has held a security clearance since 2011. Applicant's job provides health insurance, a retirement program, and other benefits since she started at her current employer earning \$14.00 an hour. Now she earns about \$21 per hour, or \$47,000 each year. Her husband is self-employed as a residential appraiser. His income varies according to the real estate market, but has been about \$50,000 at times. (Tr.17-23, 28, 44-46; Exhibit 1)

Applicant owes 20 delinquent student loan debts. They total \$106,269. Applicant also owed eight state tax liens totaling \$11,799. Applicant also owes the Internal Revenue Service (IRS) for two liens from 2012 and 2014 totaling \$29,912. (Tr. 24-26; Exhibits 2-4, A-E)

Applicant tried to negotiate a repayment arrangement with the student loan lender, but it wanted \$1,400 monthly in repayments. Applicant could not afford that amount. When she graduated from a for-profit technical institute in 2008 she had about \$80,000 in student loans to repay. By 2012, she was behind in making payments on her student loans. She had a difficult time saving money to pay these debts. At first, she paid \$5 monthly to rehabilitate her government education loans. In May 2016 Applicant arranged a student loan repayment program allowing her to repay the loans at \$250 a month. Her exhibit shows the February 2017 monthly payment is \$311.86. She owes \$89,103 on federal student loans and \$69,000 in private loans she had to borrow for her undergraduate school because the administration told her the government loans would not cover costs. She attended that school because it had the criminal justice courses she wanted. The U.S. Department of Education subsequently closed the college for a variety of reasons. (Tr. 24-28, 47-55; Exhibits 6, B, C, F, H, J, K)

Applicant's marriage in 2008 resulted in her name being merged into the federal income tax account with her husband. She did not realize the requirements for self-employed people, such as her husband, when filing taxes. By 2012, she and her husband were behind in making payments on the taxes, both federal and state. She had a difficult time saving money to pay these debts. (Tr. 24-28; Exhibits 6, F)

Applicant's husband had Federal and state tax debts dating from 2003 when he started his appraisal business and continued until 2014. He filed the returns as a self-employed businessman, but did not have sufficient money to pay all taxes each year. After 2014, they focused on paying the state taxes. Applicant and her husband paid their state taxes in full by October 2016 at the rate of \$695 monthly. She started making those tax payments immediately after her bankruptcy terminated in 2014. (Tr. 29-33, 37, 40; Exhibits 6, D)

Applicant's federal income taxes were also unpaid in full because of her husband's seasonal business. They owe about \$95,000 to the IRS. Applicant's husband received a letter from the IRS on November 30, 2016, stating their income taxes were considered "uncollectible" with no reason given. Her husband was not withholding sufficient money from his income with which to pay the income taxes to the IRS. Her income has state and federal income taxes deducted from each paycheck. Her husband's lack of regular tax payments are the source of the IRS tax debt. Applicant had not filed an offer in compromise with the IRS before receiving the SOR. She has now filed an offer in compromise with the IRS and it is being considered with a response date from the IRS of July 10, 2017. (Tr. 33, 34, 37-41, 61; Exhibits E, I)

Applicant and her husband now work with an accountant to have the federal and state taxes paid on time and in full. They are deducting from their income sufficient funds to pay the taxes for their joint tax filing. Her husband works with the accountant because his business causes most of the accounting problems. Applicant testified she was saving money so that she could pay off her delinquent debts. (Tr. 34-37; Exhibits 6)

Applicant and her husband filed Chapter 13 bankruptcy in 2012 to give themselves a plan to repay their debts. The payments to the trustee were \$2,085 a month, deducted from her paychecks. They later had it changed to her husband's income, but eventually in 2014 they could not maintain that schedule. The case was subsequently dismissed. Her income alone was insufficient to support the family and pay the Chapter 13 trustee. Applicant had financial counseling as part of the bankruptcy proceeding. She has participated in the Dave Ramsey financial planning program since September 2016. (Tr. 27, 28, 58; Exhibits 6, F, G)

Applicant and her husband had medical debts they had to pay, particularly after the birth of their daughter. Her husband also was diagnosed with a heart condition in 2014. They paid all their medical debts. (Tr. 37; Exhibits 2-4)

Applicant drives a 2009 model car and her husband's car is a 2006 model. They do not intend to purchase other vehicles until they pay their debts. Her husband's car is

expensive to maintain, but he needs it for his appraisal work because it involves a lot of driving. Applicant submitted a copy of her budget and personal financial statement. The statement shows her income exceeds her expenses by \$216 monthly. (Tr. 37, 46; Exhibits 1, H)

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 and mitigating conditions, which are useful 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 (AG ¶ 2(a)). 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. 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, an "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."

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* Executive Order 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated 30 delinquent debts, consisting of student loans and unpaid taxes. The student loans total about \$106,269. She owed \$11,729 in state taxes and \$29,912 in Federal income taxes when the SOR was issued In June 2016. Applicant also filed a Chapter 13 bankruptcy in 2012 in an attempt to pay her debts in an orderly manner. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be 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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial delinquencies were caused by excessive borrowing between 2004 and 2008 to obtain a college degree from a for-profit college. She borrowed money from the Federal government and her college because the Federal loans did not cover the tuition. The college controlled the tuition costs. The college debts were beyond Applicant's means to negotiate because of the mandatory nature of the tuition charges. She now has a repayment plan for the Federal loans and plans to negotiate those college payments later. AG ¶ 20 (b) applies.

Applicant is currently paying her debts in an orderly manner. She paid all state income tax debts, submitted an offer in compromise for the Federal taxes, and has an installment payment plan for student loans. She is working with an accountant to prevent future tax delinquencies by escrowing sufficient funds to pay the income taxes on time and in full. The major problem with the taxes arose from her husband's seasonal income from his appraisal business, which made it difficult to pay estimated taxes. Applicant became liable for the income taxes when she married her husband in 2008. Part of their tax liability before 2008 was not her fault or responsibility. There are clear indications from the evidence that her financial problems are coming under control and being resolved. AG ¶ 20 (c) is established.

Applicant focused her efforts on the major categories of her debts. First, for the tax years 2014 to 2016 she and husband made payments to resolve their state income tax debts that arose because of her husband's erratic annual income. Applicant submitted an offer in compromise for the family's Federal income taxes. She awaits a decision from the IRS on her offer. She has done what she can to arrange an orderly payment process for her Federal income tax repayments. Finally, Applicant has an installment payment plan in operation for her Federal student loans, and will then address her private loans. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to establish a workable plan to repay her delinquent debts.

The mitigating condition in AG ¶ 20 (a) does not apply because Applicant's financial problems are current and ongoing. AG ¶ 20 (e) does not apply because there

is no reasonable basis to contest the debts. AG ¶ 20 (f) does not apply because there is no affluence shown by Applicant's evidence.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 has significant debts, caused by her college education and difficulty in her home area of finding a job that paid her a decent income with which to repay the loans during the past eight years.

Applicant's tax debts were not caused by her inattention to tax obligations because she has monthly tax payments made to the IRS through her employer. They are caused by her husband's seasonal income and his failure to escrow funds or make quarterly estimated payments to resolve his state and Federal income taxes from about 2008 to the present. Applicant is caught in that obligation as his marital partner. She has now resolved her state income taxes and is working to resolve her remaining Federal and private student loans.

Applicant is addressing each of her remaining two types of delinquent debts. She has control of her expenses and is dedicated to paying her debts. She has made changes in her financial situation and similar problems are not likely to be repeated based on her actions to date. I found Applicant credible, and have no reason to believe that she will renege on her commitments to resolve her debts.

Overall, the record evidence leaves me without questions or doubts as to 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.ee: 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.

PHILIP S. HOWE
Administrative Judge