



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00013

Appearances

For Government: Allison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

01/12/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated security concerns regarding her finances. Eligibility for access to classified information is granted.

History of the Case

On August 15, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865 (E.O. 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 (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 8, 2015, and elected to have her case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on February 11, 2016 and responded to the FORM with a post-FORM submission documenting her bringing her SOR ¶ 1.a past due mortgage account current with a payment of \$48,637. Applicant's submission was admitted without objection as Item 9. The case was assigned to me on September 12, 2016.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four delinquent debts exceeding \$38,000. Allegedly, each of the listed delinquent debts remains outstanding.

In her response, Applicant admitted each of the allegations in the SOR, with explanations. She claimed to have paid off the district tax liens entered against her, one for \$2,987 and the other for \$458, in connection with one of her rental properties. She provided explanations of how she incurred the delinquent debt on the mortgage account on one of her seven mortgages on homes located in her area. Further, she explained the steps she is taking to bring her mortgage account current on the rental property in delinquent status.

Background

Applicant is a 52-year-old part-time senior principal for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married in 2002 and has three children from this marriage, including two stepchildren. (Item 4) She earned a bachelor's degree in December 1986. (Item 4) She has no prior military service.

Applicant has worked for her current employer as a business principal since 2012. (Item 4) Between November 2010 and June 2011, she worked as a business strategist for a non-defense contractor. (Item 4) Applicant worked for different consulting groups between January 1994 and January 2009. And from April 1991 to September 1992, she worked in community relations as an expert consultant for the U.S. Department of Justice (DOJ). (Item 4) She held a Government security clearance in previous years as a consultant, dating to 1986 or 1987. (Item 8)

Finances

Applicant owns a number of rental properties (six in all) in addition to her residence. (Items 3 and 8) She has mortgages on each of these homes, including two with the same lender that is covered in SOR ¶ 1.a.

In early 2010, Applicant and her husband became primary care-givers in their home for her mother-in-law who was diagnosed with early onset Alzheimer's disease.

Unprepared for dealing with her mother-in-law's disease, Applicant paid much less attention on financial planning, home repairs, mail, her friends, her personal health, and even her marriage. (Item 3 and Items 8) Balancing her mother-in-law's illness with the management of her properties, her home, and her family contributed to significant stress in her life. Her mother-in-law passed away in 2012. (Item 3 and Item 8)

Several months after her mother-in-law's death, Applicant's husband began having numbness in his lower body and could no longer work or manage their properties. (Item 3 and Item 8) Two years after his undergoing emergency spinal surgery, her husband's motor function has returned, and he shows improvement from his depression and psychological impact of near-paralysis.

While dealing with the health issues of her mother-in-law and husband, Applicant failed to properly monitor her properties and incurred delinquencies on the mortgage of one of her rental properties she purchased in 1990. (Item 3 and Items 5-8) Previously, she had never been late in her payments on this mortgage. Her most recent credit reports reveal a past due balance of \$34,784 on a loan balance of \$246,957. (Item 5) In her post-FORM response, Applicant documented her bringing this mortgage account current with a \$48,637 payment in February 2016. (Item 9)

Besides her mortgage debt, Applicant incurred two tax liens against her in March 2011: one for \$2,987 and another for \$458. (Items 5-8) Her district's taxing authority issued the tax lien covered by ¶ 1.b in March 2011 for unpaid income taxes for 2007. (Item 3 and Items, 5-8) The taxing authority acknowledged its filing error and released its tax lien in March 2011 (Item 3)

The tax lien covered by ¶ 1.c concerned a reportedly delinquent tenant water bill. (Item 3 and Items 5-8) After Applicant made the district aware of the mistaken lien in March 2011, the district released the lien and issued a certificate of clean hands in October 2015. (Items 3 and 5-8) The only other listed delinquent debt in the SOR is a \$127 medical debt covered by ¶ 1.d (Item 3 and Items 5-8) She assured she is making concerted efforts to resolve this debt. (Item 3)

Applicant provided no character references on her behalf, either with her answer or with her response to the FORM. Nor did she furnish any performance evaluations or evidence of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, denied, or revoked. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

Financial Considerations

The Concern: 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. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's

eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of E.O. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Applicant is a part-time senior principal for a defense contractor who accumulated four delinquent debts during periods of added stress while caring for her ill mother-in-law and husband for several years. The debts are comprised of a \$34,784 mortgage debt on one of her rental properties, two tax liens, and a small medical debt. Applicant's accumulation of the four listed delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c), "a history of not meeting financial obligations."

Applicant's pleading admissions with respect to her accumulation of unaddressed delinquent debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are fully documented in her credit reports. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Extenuating circumstances can be inferred from Applicant's persistent difficulties in caring for her mother-in-law before her passing in 2012, and with her husband's physical disabilities associated with his legs and lower back over a two year period spanning 2012-2014. Considering the available documented evidence, extenuating circumstances in this record account for some of Applicant's debt problems in connection with her past-due mortgage on her rental property, tax liens, and medical debt. Partially available to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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."

Applicant's listed delinquent debts are mostly attributable to her lack of close attention to the management of her properties over the course of several years while attending to her disabled mother-in-law and husband. She is doing much better now in handling her family-related stress conditions and has documented her bringing her mortgage account current on the one rental property in issue with a reported delinquent mortgage.

Applicant also documented her resolving the two district tax liens filed against her. Both of these liens were released in March 2011. Only the \$127 medical debt of record remains to be resolved on this medical debt, and Applicant continues to work on resolving this debt. MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," fully applies to Applicant's situation.

Whole-person assessment enables Applicant to surmount raised judgment questions implicit in her accumulation of delinquent mortgage, tax, and medical debts. Based on the information provided by Applicant, the evidence of record is enough to permit Applicant to establish judgment and trust levels sufficient to overcome security concerns associated with her accrual of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's accrual of mortgage, tax, and medical debts, and her subsequent resolution of all but the small medical debt, Applicant's debt resolution efforts are sufficient to facilitate safe conclusions that her finances are sufficiently stabilized to permit her access to classified information. Allegations covered by SOR ¶¶ 1.a through 1.d of Guideline F are resolved favorably for Applicant.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs. 1.a through 1.d: For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

