



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



In the matter of:)
)
) ISCR Case No. 15-00805
)
)
Applicant for Security Clearance)

Appearances

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

July 21, 2016

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on May 21, 2012. On October 16, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 4, 2015. She answered the SOR in writing on November 21, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on January 19, 2016. DOHA issued a notice of hearing on January 26, 2016, and I convened the hearing as scheduled on February 16, 2016. The Government offered Exhibits (GXs) 1 through 5, which were received without objection. Applicant testified on her own behalf

and submitted Exhibits (AppXs) A and B, which were received without objection. I granted Applicant's request to keep the record open until March 16, 2016, to submit additional matters. On February 26, 2016, she submitted Exhibit C, which was received without objection. The record closed on March 16, 2016. 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 denied the factual allegations in all the Subparagraphs of the SOR. .

Guideline F -Financial Considerations

Applicant is a 50 year old employee of a government contractor. (TR at page 19 lines 12~19, at page 20 line 18 to page 22 line 19, and GX 1 at pages 5 and 10.) She was divorced, after "seven years" of marriage, in May of 2012. (TR at page 19 line 20 to page 20 line 2, and AppX A.) All of the alleged past-due debts are related to her divorce.

1.a. Applicant denies that she is indebted to Creditor A in the amount of about \$14,274. Pursuant to her divorce degree, her former spouse was awarded their residence. (TR at page 25 line 13 to page 27 line 18, and AppX A at page 7.) Pursuant to a quitclaim deed, he also assumed the debt vis-a-vis the property. (*Id.*) He later defaulted on the mortgage, and Creditor A sold by the property by a "short sale." Creditor A has not sought any monies from Appellant. (TR at page 25 line 13 to page 27 line 18, and AppX A at page 7.) This allegation is found for Applicant.

1.b. Applicant initially denied that she was indebted to Creditor B in the amount of about \$169. She later discovered that this was her debt, and not that of her former husband. (TR at page 27 line 19 to page 28 line 5.) She paid this debt in January of 2015, as evidenced by a check drawn to Creditor B. (AppX B at page 1.) This allegation is found for Applicant.

1.c. Applicant also initially denied that she was indebted to Creditor C in the amount of about \$134. She later discovered that this was her debt, and not that of her former husband. (TR at page 28 lines 6~11.) She paid this debt in January of 2015, as evidenced by a check drawn to Creditor C. (AppX B at page 2.) This allegation is found for Applicant.

1.d. Applicant denies that she is indebted to Creditor D in the amount of about \$5,591. Pursuant to her divorce degree, her former spouse was also awarded their furniture. (TR at page 28 line 20 to page 30 line 1, and AppX A at page 7.) He paid \$3,000 towards this debt, but later defaulted on the payments. This is corroborated by a statement from her former spouse. (AppX C at page 3.) In theory, although Applicant may be technically responsible for the post-divorce financial shortcoming of her former

spouse, I find this alleged debt to be *de minimis* when compared to the overall alleged past-due indebtedness. This allegation is found for Applicant.

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. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to obtaining 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 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* EO 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 Paragraph 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 notes several conditions that could raise security concerns. Under Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant has had difficulty meeting her financial obligations. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20(b), it may be mitigating where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. . . . divorce or separation), and the individual acted responsibly under the circumstances.”* Applicant’s alleged past-due indebtedness is directly attributed to her 2012 divorce. Under Subparagraph 20(d), it may also be mitigating where *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has addressed all of the alleged past-due debts. Two she has paid, and the other two were those of her former spouse.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of Applicant’s conduct and all the circumstances. Under Paragraph 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.

The administrative judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant is well respected in the workplace and the community. (AppX C at pages 1 and 2.) The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from her Financial Considerations, under the whole-person concept.

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
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	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.

Richard A. Cefola
Administrative Judge