



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



In the matter of:)
)
 -----) ISCR Case No. 15-02390
)
 Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

September 9, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on October 22, 2014. (Item 4.) On October 25, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) regarding 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 on September 1, 2006.

Applicant answered the SOR in writing, with supporting documentation, on November 4, 2015, and requested a decision by an administrative judge without a hearing. (Item 2.) Department Counsel submitted the Government's written case

(FORM) to Applicant on December 16, 2015.¹ Applicant acknowledged receipt of the FORM on December 29, 2015. She was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted additional information on or before January 14, 2016. Department Counsel had no objection to my considering the documents, and they are admitted collectively as Applicant Exhibit A. The case was assigned to me on February 4, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 28 and single. She is employed by a defense contractor, and seeks to obtain a security clearance in connection with her employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR (1.a through 1.f). She also submitted additional information to support her request for a security clearance.

The SOR lists six delinquent debts (1.a through 1.f), totaling approximately \$25,625. The existence and amount of the debts is supported by admissions in Item 4; or by credit reports dated November 4, 2014; and February 19, 2015. (Items 5 and 6.)

The current status of the debts is as follows:

1.a. Applicant admitted that she owed a collection agent \$4,325 for a past-due account 19183225467304. She submitted evidence showing that she paid this debt on November 10, 2015. (Applicant Exhibit A at 10.) This debt is resolved.

1.b. Applicant admitted that she owed a past-due medical debt in the amount of \$706. She submitted documentation with her answer to the SOR showing that she paid the debt on October 26, 2015. (Item 2 at 3-4.) This debt is resolved.

1.c. Applicant admitted that she was indebted for a bank credit card in the amount of \$2,667 on account 60191832254647304. Applicant stated that this debt was purchased by the creditor in 1.a. The account number is the same as the account alleged in 1.a, except for the addition of the first two digits. (Answer at 3.) In addition,

¹Department Counsel submitted seven Items in support of the SOR allegations. Normally Item 7 would be inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on December 26, 2014. It was never adopted by Applicant as her own statement, or otherwise certified by her to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. However, in reviewing Applicant Exhibit A, it appears that Applicant addressed some of the topics discussed in that interview. Accordingly, I find that Applicant has waived her right not to have Item 7 considered in this particular case.

the entry for this debt in Items 5 and 6 states, "Account transferred or sold." Applicant has submitted sufficient evidence to show that this debt is the same as the debt set forth in 1.a, which is resolved.

1.d. Applicant admitted that she was indebted for a repossessed automobile debt in the original amount of \$17,737. According to Applicant, the car was in her name, but she let her ex-boyfriend take the car after they broke up as long as he made the payments. This occurred after she lost her job in October 2014 and could no longer make payments herself. Instead, he illegally sold the car and left Applicant with the debt. Applicant attempted to get the police to help her resolve this matter, but that was unsuccessful. Eventually, she authorized the finance company to repossess the car. Once the car was auctioned the amount Applicant continues to owe is \$11,723. Applicant states that she is in contact with the finance company in order to resolve this debt with a payment plan she can afford now that she is gainfully employed. (Item 2 at 3; Item 7 at 5; Applicant Exhibit A at 2-3.) This debt is not currently resolved.

1.e. Applicant admitted owing a city \$6.00 for unpaid tickets. Applicant provided proof that she paid this debt on February 14, 2015. (Item 2 at 5.) This debt is resolved.

1.f. Applicant admitted owing a collection agent \$204 for a past-due debt. Applicant provided proof she paid this debt on May 15, 2015. (Item 2 at 6.) This debt is resolved.

Applicant supplied information showing that her current financial situation is stable. She is gainfully employed with a good income, and was able to qualify for a debt consolidation loan in 2015. As of the date the record closed Applicant had made her first two payments on the consolidation loan in a timely manner. (Applicant Exhibit A at 1, 5-9.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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, “The 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by her own admission, and supported by the documentary evidence, had six delinquent accounts that she formerly could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. AG ¶ 20(a) states that it may be mitigating where “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.” Applicant has successfully paid or resolved all but one of the debts set forth in the SOR. She also has qualified for a debt consolidation loan in the last year, showing that her financial situation is now stable. Indeed, taking out the loan allowed Applicant to “lower the overall amount of interest I was incurring as well as have a single fixed payment amount with a reasonable time frame to pay off the debt.” (Applicant Exhibit A at 4.)

Applicant continues to owe the debt set forth in allegation 1.d. However, the amount is much less than alleged in the SOR. In addition, Applicant is not ignoring the debt but is attempting to negotiate a reasonable payment arrangement with the creditor. With regard to this debt I find that AG ¶ 20(b) applies, “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g, loss of employment, . . ., or a death, divorce, or separation), and the individual acted responsibly under the circumstances.”

Based on all of the above circumstances, I find that Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). I also find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Since all four of these mitigating conditions were established by the facts of this case, Guideline F is found for Applicant.

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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems in the past, almost all have been resolved, and she has the knowledge and ability to avoid such problems in the future. She is working in good faith to resolve the remaining debt, which arose when her ex-boyfriend stole her car, with the creditor.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports granting her request for a security clearance.

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 through 1.f: 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.

WILFORD H. ROSS
Administrative Judge