



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02510

Appearances

For Government: Tovah Minster, Esquire
For Applicant: Wayne Roberts, Esquire

03/29/2017

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On November 20, 2015, the Department of Defense (DOD) 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 DOD on September 1, 2006.

In an undated response, Applicant admitted six of the 11 allegations raised and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 12, 2016. The matter was scheduled on May 20, 2016, for a June 21, 2016, hearing. The hearing was convened as scheduled.

The Government offered four documents, which were accepted without objection as exhibits (Exs.) 1-4. Applicant offered testimony and 10 documents that were accepted into the record without objection as Exs. A-J. The record was held open through July 11, 2016, for the submission of additional material. The transcript (Tr.) was

received on June 28, 2016. On July 11, 2016, Applicant requested an extension to submit materials through July 25, 2016. That request was granted.

On August 2, 2016, I was forwarded a package of material timely submitted by Applicant. No objection was noted. It was pre-marked Exs. A-K. Some of the exhibits were duplicative of previously submitted documents (e.g. the newly submitted Ex. A was the same as the previously submitted A. Others varied, for example, Ex. H in the original submissions was a certificate of appreciation, but was material regarding a debt in the more recently submitted Ex. H). Therefore, to allay confusion, they were accepted as 2A-2K. The record was then closed. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 27-year-old communications, outreach, and readiness specialist who has been with her present employer for over four years. She earned a bachelor's degree in political science. Her education was financed, at least in part, through student loans. Applicant is married and has no children.

In May 2010, Applicant graduated from college. Her first job was with a county community services entity, earning only \$200 a month. As she was negotiating her various student loans into forbearance, Applicant relocated in or around January 2011 to accept a modestly higher paying position. She stayed with that job for about a year-and-a-half. She entered into a payment plan with the student loans administered by the U.S. Department of Education (ED) by the spring of 2011, but she has had difficulty tracing the multiple changes of servicers handling her private student loans. (Tr. 22) She has not received financial counseling, but she has legal counsel who has recently helped her organize her efforts.

Among the loans with which she first made contact was the entity holding the loan at SOR allegation 1.a for \$12,127. She has been paying \$100 a month on this account since 2011. (Tr. 23; Ex. A, Ex. 2A) Another loan, the successor to which is referenced at SOR allegation 1.b, has been in repayment since at least January 2015. (Tr. 24; Ex. B, Ex. 2B; Ex. 4 at 6 reflecting the same type of student loans from the same year and equal in sum to the four loan balances noted in Ex. B/Ex. 2B)

The private student loan noted at SOR allegation 1.c was charged off with no balance reflected on the SOR. A high balance is noted on the credit report as \$21,252. Applicant presented documentation showing a settlement arrangement was made with this creditor on a balance now reduced to \$10,576 on an adjusted balance of \$20,052. Applicant was to make payment on or by August 1, 2016. In addition, Applicant earlier paid this lender \$100 in May 2016. (Ex. 2C, duplicated at Ex. 2J)

Regarding the debt at SOR allegation 1.d for a private student loan balance of \$12,908, Applicant showed two payments for \$207 each to this creditor, although no account number is clearly noted that can be compared to the account reflected in the

credit report at Ex. 4. (Ex. D, 2D) SOR allegation 1.e is for a \$100 medical balance. Applicant's Ex. 2E shows that the account is now at zero.

The debt at SOR allegation 1.f for \$19,960 bears the same account number as the debt in repayment with a different entity. (Tr. 25; Ex. C, Ex. 2F; Ex. 4 at 5 noting the account number to be the same as checks from January 2016 to the present in Ex. C)

No documentary evidence was presented regarding the medical debts for \$216 and \$216 referenced in allegations 1.g and 1.h at the hearing. At Ex. 2G and 2H, Applicant noted that the medical debt is no longer on Applicant's credit report, as of July 2016. However, the medical debts were previously shown as opened February 2008, therefore, it is unknown whether these were satisfied, unverifiable, or deleted due to age (over 7 years).

The SOR allegation at 1.i concerns a \$10,538 collection account. Although not referenced at hearing, in subsequent materials, specifically at Ex. 2I, Applicant wrote: "This account is [the same as the entity noted at 1.d] account. This is confirmed by dialing the number listed on the credit report submitted by the Agency. Enclosed . . . is the payment history for [1.d]." The debt appears to be a duplicate, but remains unclear based on the documentation.

With regard to the collection account for \$17,000 at SOR allegation 1.j and the charged-off student loan account for \$21,252 at SOR allegation 1.k, Applicant asserted that these accounts, both with a similarly named entity, are for the debt cited at SOR allegation 1.c to a lender with a historic nexus to this creditor. Linkage can be made between the creditor names.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 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 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.

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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

One who seeks access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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 *a/so* EO 12968, Section 3.1(b).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence indicating that Applicant had multiple delinquent debts, mostly student loans. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

For her first years out of college, Applicant was notably underpaid, but she moved on where she could find higher paying employment. This is sufficient to raise AG ¶ 20(b). Not long thereafter, she responsibly handled her student loans from ED. In contrast, she had more difficulty simply locating the current holders of her private college loans, an increasingly difficult challenge.

Applicant provided documentary evidence showing she is in repayment on the debts noted at SOR allegations 1.a-1.b; poised to commence a repayment plan on the private student loan debt noted at SOR allegation 1.c; and provided information tending to indicate she has initiated repayment on this debt, although she failed to provide a clear and definitive nexus between her payments and the cited loan. She provided documentation reflecting she paid the delinquent medical account balance noted at SOR allegation 1.e, but not the medical balances cited at SOR allegations 1.g and 1.h.

The nexus between the student loan at SOR allegation 1.f is, at this point, speculative. However, the student loans at SOR allegations 1.i-1.l tend to be duplicative of a delinquent student loan already successfully addressed as poised for repayment. Both her testimony and submitted narrative indicate she has been earnestly working her way through the difficult chain of custody of her student loans. More work has yet to be done. However, I am convinced Applicant has exerted diligence in investigating these debts, initiating contact with the lenders when found, and methodically addressing each account. I find Applicant raised mitigating conditions AG ¶ 20(c)-(d).

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. I incorporated my comments under the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 27-year-old communications, outreach, and readiness specialist who has been with her present employer for over four years. She is married and has no children. Since graduating college, she has slowly risen in position and income through personal industry. When applicable after college, she entered into repayment on her ED student loans, then started the difficult path of tracing her private loans from the lenders from her college days to their current servicers.

Looking at the delinquent debts at issue, mostly student loan-related, she has not addressed each account. She has, however, approached her delinquent debt as a whole and is at various stages of repayment on all but two minor medical debts. Resort to the credit reporting bureaus could be had to assure what appears to be duplicate entries for the same student loan are removed from her credit report, so as to not cause further confusion in the future. Overall, however, Applicant has formulated a strategy for addressing the delinquent debts at issue, and she has implemented it successfully. Better organized with the help of her counsel, I have no reservations she will not continue her present efforts and implement whatever additional payments are needed to resolve all of the debt at issue. Financial considerations security concerns are mitigated.

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-1.i:

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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge