



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



In the matter of:)
)
) ISCR Case No. 15-02615
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On October 17, 2015, the Department of Defense (DOD) issued to 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on November 18, 2015, and elected to have her case decided on the written record. On February 25, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on March 9, 2016. Applicant was afforded an opportunity

to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence and provided documents that were marked as Applicant's exhibits (AE) A through L. The Government's documents are identified as Items 2 through 7. All documents are admitted into evidence without objection. The case was assigned to me on September 27, 2016.

Findings of Fact

Applicant did not specifically admit or deny the allegations in the SOR, but instead provided explanations regarding each allegation. I will consider her explanations as denials. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. She married in 1994. She has a 21-year-old child from the marriage. She has two other adult children, ages 36 and 30. She and her husband separated for periods of time in both 2011 and 2013, filed for divorce in December 2013, and it was final in September 2014.¹ She has earned various diplomas from different vocational schools from 1988 to 1998. She has been employed by the same federal contractor in several positions since 2000.²

Applicant attributes her financial problems to her divorce, an anticipated pay increase that she did not receive, and the tripling of her rent. She indicated her ex-husband was unfaithful, physically abusive, and refused to help pay their joint debts. During different periods of separation, her husband would not help her financially and she experienced financial problems. Applicant was interviewed by a government investigator in November 2014. She explained she began to fall behind on her bills after her husband pushed her to the ground and she injured her knee, which required surgery. She was then unable to work. After exhausting her sick and annual leave, she received disability benefits, which was 60% of her salary for a period, and she was not able to work from home. Her medical insurance did not cover the full cost of her surgery, office visits, and physical therapy. Her husband did not pay child support during their separation and refused to drive her to her appointments, so she had to pay for transportation. She believed that when they divorced that he would become responsible for paying some of their joint debts, but that did not happen.³

SOR ¶ 1.a alleges that Applicant failed to file her 2011 Federal income tax return. SOR ¶ 1.b alleges she is indebted to the Federal Government in the approximate amount of \$3,000. Applicant indicated that she sent her 2011 Federal income tax return to the Internal Revenue Service (IRS) in March 2015. Her explanation for failing to file

¹ Items 4 and 7. Applicant also listed a period of separation in February 2012 and there is conflicting information as to the legal status of their separations.

² Item 4.

³ Items 3, 7.

on time was because she did not have transportation to retrieve her completed tax returns from her preparer, and she does not drive. The preparer wanted to be paid and had Applicant's tax receipts. Applicant indicated that the preparer eventually shredded her tax documents. Applicant received a refund for tax year 2011 that was applied to her 2009 and 2010 tax debt.⁴

Applicant explained the reason she had a tax debt for 2009 and 2010 was because she entered her dependent son's social security number incorrectly on the tax form. Once this error was corrected, adjustments were made. Her 2014 tax refund was credited toward her 2009 and 2010 tax debt. Applicant no longer owes a tax debt to the Federal Government.⁵

In November 2015 Applicant began addressing many of the debts alleged in the SOR. The following is the status of each of the remaining SOR debts.

SOR ¶ 1.c - credit card debt (\$1,530). Applicant sent a letter to the creditor in November 2015 with a payment of \$25. She has been making consistent payments and increased the monthly payment to \$50 in March 2016. She is slowly reducing the balance owed. She provided documentary evidence of her actions.⁶

SOR ¶ 1.d – rent discrepancy (\$924). Applicant sent a letter to the creditor in November 2015 with a payment of \$25. There was a dispute regarding the amount owed. She has been making consistent payments and as of March 2016 she had reduced the balance to \$380. She provided documentary proof of her actions.⁷

SOR ¶ 1.e – medical/physical therapy (\$503). Applicant began repaying this debt before she received the SOR and had reduced the balance at the time to \$278. As of March 2016, she further reduced the balance through consistent monthly payments to \$153. She provided documentary proof of her actions.⁸

SOR ¶ 1.f- department store card (\$364). Applicant sent a letter to the creditor in November 2015 with a \$25 payment. She has been making consistent monthly payments and as of March 2016 the balance was reduced to \$239. She provided documentary proof of her actions.⁹

⁴ The tax documents that Applicant provided also show she was delinquent in paying taxes for other tax years, but they too are now satisfied. I have not considered this information for disqualifying purposes, but may consider it when analyzing Applicant's credibility, in mitigation, and the whole person.

⁵ Answer to the SOR; AE A.

⁶ Answer to SOR; AE E.

⁷ Answer to the SOR; AE F.

⁸ Answer to the SOR; AE G.

⁹ Answer to the SOR; AE H

SOR ¶ 1.g – store account (\$292). Applicant sent a letter to the creditor in November 2015 with a \$25 payment. She has made payments and reduced the balance to \$167. She provided documentary proof of her actions.¹⁰

SOR ¶ 1.h - medical account (\$279). Applicant sent a letter to the creditor in November 2015 with a \$25 payment. She has reduced the balance as of March 2016 to \$119. She provided documentary proof of her actions.¹¹

SOR ¶ 1.j – medical/dental (\$208). This is a bill for her son's dental that she believed was being paid for by her ex-husband. She sent a letter to the creditor with a \$25 payment. She has reduced the balance to \$83. She provided documentary proof of her actions.¹²

SOR ¶ 1.l – medical (\$1,200). Applicant indicated she contacted the creditor and disputed the account as belonging to her son. She was advised the account is closed and would be removed from her credit report. It is not listed on her most recent credit report.¹³

SOR ¶ 1.m - medical (\$1,002). Applicant disputed this account indicating she made the final payment in June 2015. She contacted the creditor to dispute the account and was told it would be removed from her credit report. Her most recent credit report does not report this debt.¹⁴

SOR ¶ 1.n – medical (\$180). Applicant contacted the creditor about this debt and was advised it pertained to her son. Due to the age of the account, it was closed. It is no longer reported on her most recent credit report.¹⁵

SOR ¶ 1.o - medical (\$100). Applicant made arrangements to resolve this debt with two payments of \$50 to be made in April and May 2016. She provided a document to show she corresponded with the creditor to resolve the debt.¹⁶

¹⁰ Answer to the SOR; AE I.

¹¹ Answer to SOR; AE J.

¹² Answer to SOR; AE K.

¹³ Answer to SOR; AE A, B.

¹⁴ Answer to SOR; AE A, B.

¹⁵ Answer to the SOR; AE A, B.

¹⁶ Answer to the SOR; AE A, L.

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 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, 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹⁷

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant began experiencing financial problems during separations from her husband beginning in 2011. She has numerous debts that are delinquent. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially 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

¹⁷ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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; and

(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.

Applicant has numerous delinquent debts that she is resolving. AG ¶ 20(a) does not apply. She attributed her financial problems to time periods when she was separated from her husband, and he would not provide child support or help pay their joint debts. In addition, after her husband pushed her down and she injured her knee, she was unable to work after a surgery. She exhausted her sick and annual leave and the disability benefits were insufficient to pay her bills. She also indicated that her rent tripled during this period. She expected her divorce would require her husband to share in paying their joint debts, but that did not happen. These are conditions beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. Despite limited financial means, Applicant has been slowly, but consistently, paying down the balances owed on her debts since receiving the SOR in November 2015. She has resolved her tax issues. However, she did not act diligently because she did not address the issue until 2015. I find she has acted responsibly in starting payment plans or disputing the other alleged debts. AG ¶ 20(b) applies.

Applicant provided sufficient evidence to conclude that there are clear indications that her financial problems are under control and being resolved. She filed her delinquent tax return and all delinquent taxes are paid. She has payment plans for other debts and has made consistent payments since November 2015. There is no evidence she received financial counseling. The second half of AG ¶¶ 20(c) applies. There is sufficient evidence to conclude that she initiated good-faith efforts to pay the delinquent debts that are listed on her most current credit report. AG ¶ 20(d) applies. Applicant disputed several debts (SOR ¶¶ 1.l, 1.m and 1.n) because they belonged to her adult son or the account was paid. The accounts are no longer on her most recent credit report. AG ¶ 20(e) applies to those debts.

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 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.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 55 years old. Although her initial reason for failing to file her 2011 tax Federal tax returns is not particularly persuasive, she provided sufficient proof that her tax issues are now resolved. Through circumstances beyond her control she was unable to pay her debts. Her ex-husband was responsible for her inability to work for a period. She has assumed the full burden of resolving all of the joint marital debts that arose during her marriage. Applicant did not provide a financial statement. However, she has shown that she has been making consistent payments to resolve the delinquent debts. Those debts she disputed have been removed from her credit report. Through her consistent payment plans she is establishing a reliable financial track record. She is not required to have each delinquent debt completely paid to hold a security clearance, only that she has a reasonable plan to address her obligations and has taken action to do so. Given her actions to date, I am confident that Applicant will continue to pay her creditors to resolve the remaining balances on the debts. She has met her burden of persuasion. The record evidence does not leave me with 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 under Guideline F, financial considerations.

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.o: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge