



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



In the matter of:)
)
) ISCR Case No. 15-03126
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant's finances have improved sufficiently to establish that she has mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On February 4, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 March 6, 2016, and elected to have her case decided on the written record in lieu of a hearing. On April 21, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The Government

submitted documents identified as Items 1 through 5. Applicant received the FORM on May 13, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's undated FORM Response was received by the Government on July 5, 2016. It included three letters of recommendation from work colleagues. It is marked as Applicant's Exhibit (AE) A and admitted into evidence without objection. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 5 are admitted into evidence without objection. The case was assigned to me on March 13, 2017.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a and 1.b, and denied SOR ¶¶ 1.c-1.k, with explanations and documents. Her admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 60 years old. She is divorced and has an adult daughter. She has worked for federal contractors, with a security clearance, since 1995. She has worked as a senior facility security officer for her current employer since 2013.¹

Applicant submitted a security clearance application (SCA) in August 2014. She disclosed a \$5,200 delinquent debt. This debt was a loan Applicant used to purchase a household appliance and clothing. Applicant fell behind on payments in 2009, due to caring for her daughter and grandchildren, but also due to her own poor money management. Applicant resolved this debt (which was not alleged) through garnishment in 2012.²

The SOR alleges 11 delinquent debts totaling about \$18,855. Most of these are listed on a September 2014 credit report. A December 2015 credit report lists three of the SOR debts.³

The largest debt is SOR ¶ 1.a, a charged-off debt of \$15,713 related to a repossessed auto. Applicant purchased the vehicle in 2004, and later turned the car in voluntarily after she fell behind on her payments in about 2009. She states that she expected to be contacted by the creditor, but did not hear from them after she moved. The debt is found on her September 2014 credit report, but not the December 2015 credit report.⁴

¹ Item 2.

² Items 2, 3.

³ SOR debts ¶¶ 1.a-1.c and 1.e-1.j are found on Item 4. SOR debts ¶¶ 1.c, 1.d, and 1.k are found on Item 5, along with a \$118 past-due debt that was not alleged.

⁴ Items 3, 4.

Applicant submits documentation showing that SOR debt ¶ 1.b (\$961) has been paid and that she has made an \$88 payment towards SOR debt ¶ 1.c (\$532). Both are consumer accounts with the same bank.

Applicant denies SOR debt ¶ 1.c, a cable bill for \$816. She indicates she called the company but they have no record of the debt. It is found on her September 2014 credit report.

SOR debts ¶¶ 1.e (\$205), 1.f (\$205), 1.g (\$105) and 1.i (\$65) are all unpaid parking tickets. Applicant denies them all, claiming they are her daughter's responsibility. These debts are all located on Applicant's September 2014 credit report. She indicates in her answer that all the tickets have now been paid. With her answer, Applicant provides several printouts from either the city's department of motor vehicles or its collection agency, as proof of her payments. None of the documents provided reference either Applicant or her daughter by name. Nevertheless, I find that these parking ticket debts have been or are being paid.

Similarly, SOR ¶ 1.h (\$80) is an unpaid speeding ticket. Applicant says it is her daughter's. It is found on Applicant's September 2014 credit report. Applicant states in her answer that the debt has been paid and with her answer she provides a printout from an on-line payment service for the ticketing authority. The document references a given license plate number but notes "plate not found." It is not clear that the document refers to Applicant. I find that she undertook reasonable efforts to pay the debt.

SOR ¶ 1.j is a \$50 debt in collection to an unidentified medical creditor. The debt is listed on Applicant's September 2014 credit report, with an account number, but does not provide the creditor's name or contact information. Applicant does not recognize the debt. I construe Applicant's answer as a denial. I find that there is insufficient information about this debt for Applicant to admit or deny it, or to make a reasonable attempt to resolve it.

SOR ¶ 1.k is a \$123 debt to a phone company. Applicant admits the debt and intends to pay it.

Applicant acknowledges that her debts are due to her own poor money management. She provides no documentation of any credit counseling. She provides no details or documentation about her monthly income or expenses.⁵

Applicant provides recommendation letters from a family friend and former co-worker who is godmother to Applicant's grandchildren and from two current supervisors who have worked with Applicant for several years. Her references attest to her honesty, diligence, work ethic, loyalty, dedication, trustworthiness, leadership, and her

⁵ Item 1.

commendable protection of classified information over her career as a facility security officer.⁶

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.

⁶ AE A.

Section 7 of EO10865 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.⁷

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.

Beginning in about 2009, she became financially overextended due to her own poor financial management, and accrued delinquent debts of over \$18,000. 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

⁷ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

doubt on the individual's current reliability, trustworthiness, or good judgment;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant fell behind on her debts several years ago after she made some purchases she could not afford, including a loan for some expensive items, and an automobile. She resolved the loan debt through garnishment in 2012. She voluntarily returned the vehicle. The auto seller has not pursued her for the remainder owed, and it has been charged off. Her other SOR debts are fairly small and are being resolved. Her most recent credit report shows significant improvement. Her financial issues are unlikely to recur and no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

Applicant has resolved or is resolving her debts. The charged-off remainder following the repossession has not clearly been resolved, but it occurred several years ago, and Applicant took action when she realized she could not maintain her car payments by voluntarily returning the vehicle. Her other debts are fairly small, and she has taken steps to pay them, with corroborating documentation. She indicates that she plans to continue working to pay her debts. Applicant is re-establishing a reliable financial track record and she remains gainfully employed, giving her the means to do so. Her recent credit report shows improvement. There are clear indications that her overall financial issues are under control. AG ¶¶ 20(c) and 20(d) apply.

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 60 years old. She has been a cleared employee in the defense industry for over 20 years, mostly as a facility security officer. Her supervisors provide strong character evidence of her professionalism and trustworthiness over her long career. Applicant has experienced financial problems due to her own financial mismanagement. But she took steps to turn things around, and her finances have improved in recent years. Her finances are no longer a security concern. She has met her burden of persuasion. 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 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.k: 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.

Braden M. Murphy
Administrative Judge