



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



In the matter of:

ISCR Case No. 15-03901

Applicant for Security Clearance

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

02/01/2017

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 24, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD CAF acted 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 (AG).

Applicant answered the SOR on April 18, 2016, and requested a hearing. The case was assigned to me on July 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 20, 2016, setting the hearing

for October 25, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The exhibit index and Department Counsel's discovery letter were marked as hearing exhibits (HE I and II). Applicant testified and offered exhibits (AE) 1-1 to 1-22; 2-1 to 2-8; 3-1 to 3-8, which were admitted into evidence without objection. Applicant's exhibit index was marked as HE III. DOHA received the hearing transcript (Tr.) on November 1, 2016.

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶ 1.d, but denied the remaining allegations. The admission is adopted as a finding of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.¹

Applicant is 60 years old. She has worked for a federal contractor for over 19 years. She is twice divorced and has one adult son who lives with her and shares living expenses. She is a high school graduate who has taken some college courses.²

The SOR alleges the following: a federal tax debt for \$1,100, and a collection debt for \$77; failure to file her 2011 and 2012 federal income tax returns; failure to file her 2009-2012 state income tax returns; and a 2013 Chapter 7 bankruptcy. The debts are supported by a credit report from April 2015, by bankruptcy court records, and by her statements to a defense investigator in July 2013.³

Applicant's bankruptcy was mainly caused by her ex-husband's quitting his job, which decreased the family's overall income by about \$10,000 per year and required Applicant to pay all the monthly bills as well as fund her ex-husband's schooling. When the bills and obligations became unmanageable, she sought bankruptcy protection in 2013. The delay in filing her federal and state tax returns was due, in part, because her ex-husband refused to cooperate in providing necessary tax information. After her interview by a defense investigator in July 2013, Applicant took action to resolve her tax issues. As noted below, Applicant has filed all necessary returns and paid all tax liability. She filed her returns and paid the taxes due well before the SOR was issued in this case. Her current finances are in good shape and she has steadily increased her credit score.⁴

¹ Answer.

² Tr. at 5, 11, 19-20; GE 1.

³ GE 3-6.

⁴ Tr. at 22-23, 28-29, 30, 32-33; AE 1-1 to 1-22, 2-4 to 2-8.

The status of the debts is as follows:

SOR ¶¶ 1.a and 1.b (unfiled federal tax returns for 2011-2012 and unfiled state tax returns for 2009-2012):

Applicant documented that she filed her federal tax returns for 2011 and for 2012. Although not alleged, she also documented that she filed her federal tax returns for 2013 to 2015. She documented that she filed her 2011 and 2012 state tax returns, but did not include documentation to show that she filed her 2009 and 2010 state tax returns. She also presented evidence that she filed her 2013 to 2015 state tax returns. She testified that she filed her 2009 and 2010 state tax returns. I find her testimony credible. Her tax filing issue is resolved.⁵

SOR ¶ 1.c (federal tax debt for \$1,100):

Applicant documented that she paid this tax debt in October 2012 when an overpayment was applied to her 2010 tax debt resulting in a zero balance owed for that year. This debt is resolved.⁶

SOR ¶ 1.e (collection account for \$77):

Applicant testified that this debt was included in her Chapter 7 bankruptcy, but a review of the schedules did not reveal the debt. This debt is of such a minor amount to have little, if any, security significance. This debt is not resolved, but inconsequential.⁷

Applicant provided job performance appraisals for 2013 and 2015. In 2013, she received an overall appraisal of “substantially achieved commitments” (3.2 out of 5). In 2015, she received an overall appraisal of “exceeded commitments” (3.7 out of 5). She received a special recognition award from her employer in 2007 for exceptional performance. President Obama recognized her for her volunteer efforts in 2008, 2012, 2013, 2014, and 2015. She was also trained as a court appointed special advocate in 2013, which allowed her to represent the best interests of abused and neglected children in state court.⁸

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

⁵ Tr. at 22-23, 28-30; AE 1-1 to 1-22.

⁶ Tr. at 24; AE 1-4.

⁷ Tr. at 22; GE 4-5.

⁸ AE .3-1 to 3-8

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.

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."

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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file several years' worth of federal and state tax returns and she owed federal tax and other debt. She had debts discharged in a Chapter 7 bankruptcy. I find the disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 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; and

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

Applicant's took significant action after her background interview and subsequently filed all her federal and state tax returns and paid all existing tax debt. Her ex-husband quitting his job and incurring additional expenses necessitated her 2013 Chapter 7 bankruptcy. Since she is up to date with all her federal and state tax return filings, her tax debt is unlikely to recur. AG ¶ 20(a) partially applies. Her ex-husband's voluntary unemployment was a condition beyond her control. She showed responsible action by pursuing a Chapter 7 bankruptcy to achieve a fresh financial start. She receives credit for her efforts under AG ¶ 20(b). There is evidence of financial counseling from her bankruptcy case. She documented that her debts are under control by showing proof of payment of her tax debt and her increased credit rating. Her current finances are in good order. She receives credit under AG ¶¶ 20(c) and 20(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 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 guideline 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 considered the circumstances that led to Applicant's financial problems and her personal situation. I also considered her job performance evaluations, her special recognition award, her child advocacy training, and her many years of volunteer service for which she received national recognition. The evidence supports Applicant's track record of financial stability.

Overall, the record evidence leaves me without 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.e: 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.

Robert E. Coacher
Administrative Judge