



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



In the matter of:

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ISCR Case No: 15-04054

Applicant for Security Clearance

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

08/02/2016

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated delinquent debts between 2010 and 2016. The majority of those debts were unpaid medical bills, which she has resolved. She mitigated the security concerns raised under the guideline for financial considerations. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On December 3, 2014, Applicant submitted an electronic Questionnaire for Investigations Processing Investigation Request (e-QIP), as part of an investigation for a security clearance. On December 7, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for*

Determining Eligibility for Access to Classified Information effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on December 29, 2015, and requested a hearing before an administrative judge. On March 10, 2016, DOHA assigned the case to me and issued a Notice of Hearing setting the case for April 8, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through GE 5 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through AE L into evidence without objection. DOHA received the hearing transcript (Tr.) on April 15, 2016. The record remained open until May 2, 2016, in order to provide Applicant time to submit additional documents. Applicant timely submitted exhibits that I marked as AE M through AE R, and admitted without objection. Subsequently, I requested a document that Applicant mentioned in an email. She promptly submitted the document, and I marked it as AE S. Department had no objection, and it is admitted into the record.

Findings of Fact

In her Answer to the 26 allegations in the SOR, Applicant denied ¶¶ 1.h, 1.k, 1.l, 1.n through 1.w, 1.y, and 1.z on the basis that she paid or resolved them. She admitted the remaining allegations. All admissions are incorporated herein.

Applicant is 55 years old and married. She and her husband have three adult children. She has a Ph.D. In December 2014 she began a position with her current employer. Prior to obtaining this position, she experienced periods of unemployment sporadically, dating back to 2008. Her husband has not worked since 2008 or 2009. He receives disability payments. (Tr. 20-26; GE 2.)

During an interview in February 2015, a government investigator interviewed Applicant about matters in her December 2014 e-QIP, including delinquent debts. Applicant attributed some of her financial problems to periods of unemployment that began in August 2008, during which time she initially mismanaged her money and did not have enough to pay all bills. She also noted that she has been the primary income provider since her husband's disability. (GE 2.)

Based on credit bureau reports (CBR) from February 2016, April 2015, and December 2014, the SOR listed 26 allegations, which included 18 unpaid medical bills, two past due mortgages, other miscellaneous debts. (GE 3, GE 4, and GE 5.) These debts accumulated between 2010 and 2015. A summary of the status of each debt is as follows:

Debts Paid or Resolved:

SOR ¶ 1.a. Applicant is resolving an unpaid mortgage balance of \$10,663, which includes late fees of \$6,444 and one month's payment of \$2,100. She said she fell behind in the payments when she was unemployed for four months before

obtaining her current position. She subsequently negotiated a smaller monthly payment that is \$300 less than the previous one. She is trying to resolve the unpaid balance by making larger payments. (Tr. 28-31; AE A.) The debt is being resolved.

SOR ¶ 1.b. The unpaid mortgage of \$106,114, relating to a rental home Applicant owned, was recently resolved through a short sale. She said that she received an offer in December 2015 and subsequently sold it. She said she does not owe anything on the mortgage and is waiting for a 1099-C. Her mortgage company told her she will not receive that form until January 2017. (Tr. 22: AE Q.) It is resolved.

SOR ¶ 1.m. The \$100 debt owed to a retail store was paid in April 2016. (AE F.)

SOR ¶ 1.x. The \$729 gas bill from Applicant's rental property was paid in April 2016. (AE M.)

SOR ¶ 1.y. The \$3,033 debt owed for a car loan was settled and paid in February 2015. (Tr. 46-47; AE H.)

SOR ¶ 1.z. The \$52 past due amount owed to a credit card on a \$627 balance is resolved. Her account is current. (AE Q.)

The following medical debts owed to creditor C.C.¹ are paid: SOR ¶ 1.c (\$769); SOR ¶ 1.h (\$188); SOR ¶ 1.j (\$138); SOR ¶ 1.k (\$130); SOR ¶ 1.l (\$110); SOR ¶ 1.n (\$97); SOR ¶ 1.o (\$95); SOR ¶ 1.r (\$54); SOR ¶ 1.s (\$50.); SOR ¶ 1.t (\$50); and SOR ¶ 1.u (\$50). (AE O, AE N, AE S.)

The following medical debts owed to creditor C.F.² are paid: SOR ¶ 1.p (\$64); SOR ¶ 1.q (\$53); SOR ¶ 1.v (\$37); and SOR ¶ 1.w (\$37). (Tr. 41-44; AE E.)

Debts Disputed & Deleted

SOR ¶ 1.d. The \$566 cell phone debt was disputed and removed from her credit report. (AE D.) It is resolved.

SOR ¶ 1.e. The \$409 internet debt was disputed and removed from her credit report. (AE D.) It is resolved.

Unresolved

The following medical debts owed to C.F. are unresolved: SOR ¶ 1.f (\$287); SOR ¶ 1.g (\$201); and SOR ¶ 1.i (\$150).

¹ C.C. is an abbreviation for the name of the collection agency for these medical bills.

² C.F. is an abbreviation for the name of the collection agency for these medical bills.

Applicant testified that she resolved a \$331 medical debt owed to C.F. for \$199. That debt was not alleged in the SOR. (Tr. 42-44; AE R.) She paid another medical debt for \$222, which is not listed on the SOR. (Tr. 48; AE I.)

Applicant submitted a copy of her budget. Her annual salary is \$85,000. Her net monthly income, including her husband's disability payments, totals \$5,700. Her expenses are about \$2,800, and include payments on her student loans and credit cards. She has about \$2,900 remaining at the end of the month. (Tr. 26; AE J.) She has not participated in financial or budget counseling, but reviews her credit report frequently. She filed her tax returns for the past five years. (Tr. 27.)

Applicant submitted her performance evaluation from December 2014 to May 2015. She received an "Exceeds" rating (AE L.) She provided a letter from her supervisor for the past 15 months. He said that Applicant "exceeds her peers in all measures of maturity, loyalty and leadership." (AE K.) He is aware that financial issues underlie her security clearance problems. (Tr. 24.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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.

According to 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 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. Decisions include, by necessity, consideration of the possible risk 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

As documented by CBRs and her admissions, Applicant began accumulating delinquent debts between 2010 and 2015 that she has been unable or unwilling to resolve. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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;

(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's financial problems have been ongoing for about five years. Hence, AG ¶ 20(a) does not apply. Some delinquent debts arose as a result of Applicant's periods of unemployment, which were circumstances beyond her control. However, she also acknowledged that she mismanaged her money while she was unemployed, which was within her control. Because she did not present sufficient evidence demonstrating that she attempted to responsibly manage debts while they were accumulating over the years, AG ¶ 20(b) has minimal application.

Applicant provided evidence to support the application of AG ¶ 20(c). Although she has not participated in credit or financial counseling, she frequently reviews her credit report. She has a workable budget and has resolved the majority of the SOR debts. There are clear indications that her financial issues are under control.

Applicant paid or resolved 23 of the 26 SOR-listed debts, albeit many of them recently, exhibiting a good-faith effort to resolve debts, and supporting the application of AG ¶ 20(d) as to those allegations. She provided evidence documenting that she successfully disputed two of the 23 debts, as required for application of AG ¶ 20(e).

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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a 55-year-old woman, who has successfully worked for a defense contractor since December 2014. Prior to this position she experienced intervals of unemployment. In addition her husband stopped working in 2008 or 2009 as a result of a disability. These circumstances have affected her ability to pay delinquent debts.

Applicant demonstrated that all but three SOR-listed debts remain unresolved. They are unpaid medical bills and total about \$638. She is resolving a balance on her mortgage. Given her credibility and awareness that future delinquent debts may jeopardize her employment, I have no reason to believe that she will not resolve those debts and remain current with expenses in the future, especially if she continues to diligently monitor her credit and budget. The record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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 through 1.z:

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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge