



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04638

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

10/13/2016

Decision

HOWE, Philip S., Administrative Judge:

On October 29, 2014, Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP). On December 13, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on January 8, 2016. Applicant requested her case be decided on the written record in lieu of a hearing.

On February 19, 2016, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 8,

was provided to the Applicant on May 14, 2016. She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 22, 2016.

Applicant did not file a response to the FORM within the 30 day time allowed that would have expired on March 23, 2016.

Department Counsel submitted eight Items in support of the SOR allegations. Item 7 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 14, 2013. Applicant did not adopt it as her own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on September 9, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant denied the allegations in Subparagraph 1.a and admitted all other allegations (Subparagraphs 1.b to 1.l). (Items 2-6)

Applicant is 43 years old, married, and has two children. She works as a payroll clerk for a trucking company. She claims she took a pay cut when she changed jobs in 2010. Her husband was unemployed for two months in 2009. When he obtained a new job as a fleet manager for a trucking company, he also had to take a large pay reduction between his old and new jobs. (Items 1-6, 8)

Applicant owed \$14,235 in 20 delinquent medical and credit card debts (Subparagraph 1.e accumulates 10 medical accounts owed to medical providers for a total of \$7,626). The earliest delinquency is from 2012. Applicant did not explain the nature of the delinquent debts. She did not discuss in written form why and when she incurred these debts in relationship to her reduced income. Applicant also owed \$21,202 in arrearage payments on her home mortgage (Subparagraph 1.a). The mortgage debt is the 11th listed debt. Applicant sold her home for \$96,000 in December 2015 on a lender approved "short sale." The first mortgage was paid off in the amount of \$76,540 after settlement charges were deducted. The bankruptcy is the 12th financial action listed in the SOR. (Items 1 to 6)

Applicant filed a Chapter 7 bankruptcy in July 2015 jointly with her husband (Subparagraph 1.l). She listed \$18,680.70 in liabilities in Schedule F. Her total liabilities were listed as \$151,385.93 and assets of \$126,412. She had a monthly income to expense deficiency of \$1,144 according to the bankruptcy Forms B6I and BCJ. The total income from herself and her husband is listed as \$73,543. She contends all debts listed

in the SOR are listed in the bankruptcy. They appear to be discharged as listed in Schedule F of the Bankruptcy petition. The Bankruptcy Court discharged Applicant on February 10, 2016. (Items 1-6, 8)

Applicant submitted proof that she completed the bankruptcy credit counseling on July 29, 2015. I was unable to evaluate her credibility, demeanor, or character in person because she elected to have her case decided without a hearing.

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 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

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. 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2012 to the present, Applicant accumulated 21 delinquent debts, totaling \$35,437, including her mortgage arrearages, which remained unpaid or unresolved when the SOR was written. Having established the disqualifying conditions, the burden of proof falls upon Applicant to demonstrate which mitigating conditions apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three mitigating condition might have applicability.

- (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.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on her ability to repay her debts. Applicant has been unemployed two months in the past four years. Her husband was unemployed for two months in 2009, more than four years ago. Applicant and her husband both suffered significant losses of income when they were able to find new employment. She showed her and her husband's loss of income in their current positions adversely affected her ability to pay debts. This mitigating condition applies partially.

Applicant proved AG ¶ 20 (b) applied because she showed evidence of her employment situations that she were beyond her control and that she acted responsibly in resolving her delinquent debts.

Applicant resolved her mortgage debt by selling her house with the approval of her mortgage lender. That debt is resolved. AG ¶¶ 20(c) and (d) apply to that debt.

All her remaining debts are resolved in the 2015 bankruptcy she filed. She is discharged by the Bankruptcy Court. AG ¶ 20(c) 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 relevant 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 facts and circumstances surrounding this case. Applicant took action to resolve her debts by filing Chapter 7 bankruptcy in 2015 to rid her of these delinquent financial obligations and selling her house with the permission of her mortgage holder. Applicant

displayed good judgment by resolving the debts through legal actions and not ignoring them.

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 the guideline for Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
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Subparagraph 1.a to 1.l:	For Applicant
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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.

PHILIP S. HOWE
Administrative Judge