



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



In the matter of:

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ISCR Case No. 15-05123

Applicant for Security Clearance

Appearances

For Government: Candace Garcia, Esq. Department Counsel
For Applicant: *Pro se.*

03/15/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) The SOR was dated January 19, 2016. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 12, 2016.¹ A notice of

¹Applicant initially retained counsel for the case, then decided to represent herself. This caused a delay in scheduling.

hearing, dated November 14, 2016, was issued, scheduling the hearing for February 3, 2017. Government Exhibits (GX 1-10) were admitted into the record. Applicant submitted Applicant Exhibits (AX A-R).² I held the record open until February 24, 2017. Applicant submitted additional documents, which were marked as AX S-W, and admitted into the record without objection. She testified, but did not present witnesses. The transcript was received on February 13, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted seven factual allegations in the SOR totaling about \$35,000, and denied or disputed the remaining factual allegations under Guideline F (Financial Considerations). She provided detailed explanations for each allegation, and she acknowledged the two filings for bankruptcy.

Applicant is a 40-year-old systems engineer with a defense contractor. She is single and has a daughter. She graduated from high school in 1994 and received her associate's degree in 2007. Applicant attended more college classes until 2010, but has not yet obtained her undergraduate degree. Applicant has worked for her current employer since October 2011. She was previously granted a security clearance in 2000. She completed her most recent security clearance application in 2014. (GX 1)

Financial Considerations

The SOR alleges eight delinquent debts, including student loans, collection accounts, charged-off accounts, a past-due mortgage payment, which total approximately \$33,500. (GX 5-8) The SOR also alleges that Applicant filed a Chapter 7 bankruptcy in 1995, which was discharged in June 1999 (\$16,000) and another Chapter 7 bankruptcy (\$33,000), which was filed in March 2005 and discharged in June 2005. (GX 9-10)

Applicant explained that her financial difficulties began when she was younger and was the sole support for her child. She received very little, if any financial support from the child's father. She acknowledged that she did not understand the importance of a credit history. At the time, she incurred considerable medical bills due to emergency visits to the hospital for herself and her daughter. (Tr. 10) When she became overwhelmed with her debts and did not have sufficient income to pay her medical and other bills, she knew she was overextended and filed for bankruptcy (SOR 1.a) in 1999. (GX 4 and 10)

From 1999 until 2005, Applicant's annual salary was in the range from about \$30,000 to \$50,000. She started to work with the Consumer Credit Counseling Service (CCS) for about a year, but did not continue. (GX 4, Tr. 29) She started a monthly

²The exhibits in the original file had been marked by the attorney initially representing Applicant as A_K, but were remarked at the hearing as H through R. The post-hearing submissions were marked S_W.

budget, but she did not continue with the practice. Applicant could not afford the monthly amounts the CCS required for the accounts.

She acknowledged that perhaps she was living above her means. Applicant explained after CCS, she reached out to her creditors and made some payments on the smaller accounts, but she could not afford the larger ones. She stated that she was living paycheck to paycheck. (Tr. 34) She filed for Chapter 7 bankruptcy in 2005, which discharged debts totaling \$33,000. (SOR 1.b) From 2008 until about 2014, Applicant had no financial issues. (GX 6) She continued to get better jobs, which paid more money. However, certain things occurred over which she had no control. At that point, she became delinquent with her mortgage payment and could not afford her student loan payments of \$600 a month. (Tr. 37)

Applicant was able to purchase a home, but major repairs, including HVAC system and car problems occurred. She and her dad bought a vehicle together, but it had major problems and Applicant called to have the dealer take the car in 2015. The car was auctioned. Applicant received recent notification that the account was satisfied. (AX U, V) Applicant's credit score has improved. (AX F) She realizes that just improving a credit score is not sufficient mitigation with financial security concerns, but she believes it proves that she is not ignoring creditors and is paying her bills. (Tr. 24) She also monitors her credit report through a service so that she can immediately address any unresolved issues. Applicant provided each letter of dispute that she sent to her creditors and to the credit bureaus. (AX I, M)

During Applicant's January 2015 investigative interview, she explained that during the years 2007 to 2012, she was self-employed and earned little or no income. She worked as a butler, personal trainer, store cashier and other jobs to support her child. Applicant has consistently worked hard to improve her employment opportunities and is now in a responsible full-time position. (GX 1) However, she had to obtain student loans to attend classes. The student loans were in forbearance, but went to default. She is now in the process of rehabilitating them. (AX J and Q) Applicant was paying accounts before she received the 2016 SOR. (Tr. 66)

The allegation in SOR 1.c, \$2,222 collection account, was not Applicant's debt but it is unclear about the status, although removed from her credit report; 1.d, a \$1,601 collection account from a credit union was paid, and had been in a payment plan where Applicant paid \$42.14 a month.(AX A); 1.e, a \$1,660 wireless account was not Applicant's account; 1.f, a \$3,510 past-due mortgage account is current and regular payments are being made in the amount of \$1,111.04 (AX D); 1.g , a \$4,025 120 days past-due student loan has been rehabilitated and payments of \$150 a month have been made since early 2016 (AX E); 1.h, a \$15,344 charged-off account has been in repayment status since 2016 (AX B); 1.i, a \$2,179 past-due account was removed from credit report after dispute; 1.j, a \$4,514 charged-off account in repayment status since 2013 with monthly payments of \$100. The account was settled with a final payment in 2017. (AX C, W)

Applicant's current annual salary is about \$77,000. (Tr. 33) In 2000 and 2016, she received financial counseling. She has a savings account. She has steady employment. Applicant maintains a budget. (AX S) She has a monthly net remainder of \$700. She noted that she received a small inheritance from her dad who died recently. (Tr. 44) She has the ability to pay her bills. The accounts that have been removed from her account after she disputed them will be looked at again by Applicant to see if she owes money.

Applicant submitted six letters of reference which attest to her character and reliability. One project manager, who has known her for 16 years, stated that Applicant is a seasoned senior level IT professional who has achieved multiple certifications over the years. Another colleague described Applicant's ability to respect classified information and rules and restrictions. An HR specialist wrote that Applicant consistently goes above and beyond the duties in her position and has risen through the ranks to show leadership skills and a level of determination. A security personnel, who has known Applicant for several years, attests to her dedication to work and to her family. She also went to school to improve her skills and obtain knowledge while working and caring for her family by her self. (AX G, K)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

The Government produced sufficient evidence to show that Applicant accrued delinquent debts and filed for Chapter 7 bankruptcy in 1999 and 2005. The debts were discharged. The Government produced credible evidence to establish additional delinquent debts occurred after the second bankruptcy discharge. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), and 19(c).

AG ¶ 20 provides conditions that could mitigate the 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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's current financial difficulties began in about 2014. She was working but due to her student loans coming out of deferment and the HVAC repairs to her home, she fell behind in bills, especially her mortgage. She had no control over these circumstances. She obtained student loans to better her opportunities for employment. She took menial jobs and worked her way through the ranks to a good position that pays well and is steady employment. She obtained counseling and follows a budget. She disputed two debts and will address them, but she believed because they were removed from her credit reports that they were resolved. Her plan is to again contact those creditors. She has been in payment plans and consistently made monthly payments. Some of those are now fully satisfied. She has no current accounts that are delinquent. She filed for bankruptcy when she was very young and admitted that she was not knowledgeable about financial matters. The second bankruptcy was discharged in 2005. She was supporting her daughter alone, with no financial help from the father. She loves her work and has great recommendations. AG ¶ 20 (a) partially applies; 20(b) applies; 20(c) applies and 20(d) and 20(e) apply in this case.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is a 40-year-old single mother. She has held a security clearance since 2000. She has very good job recommendations. She has handled classified information over the years with no recorded problems. She was very young and a single parent when she filed for bankruptcy. She was not educated in financial matters. She was receiving no financial help from the child's father. She worked any job that she could find to support her family. She has risen through the ranks to a responsible, steady job. She has addressed her delinquent debts. She worked and attended school so that she could better her employment opportunities. However, she needed to obtain student loans to attend classes. Part of her delinquent debt was from the student loans. She also had car and house issues.

Applicant has established that she has taken sufficient actions to reasonably and responsibly resolve her debts. Applicant has shown that she can responsibly manage her financial obligations in a more timely manner. She has a budget and received financial counseling. She has worked diligently to improve her overall financial situation over the years. Overall, the record evidence leaves me without questions or doubts as to her judgment, trustworthiness, reliability, and eligibility for her security clearance. I conclude that Applicant has presented sufficient evidence of mitigation of her financial considerations security concern.

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: **AGAINST APPLICANT**

Subparagraphs 1.a:-1.j: 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 a security clearance. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge