



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 15-05180

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel

For Applicant: *Pro se*

10/16/2017

Decision

DAM, Shari, Administrative Judge:

Applicant accumulated delinquent debts between 2011 and 2015. She resolved many of them and has a plan to continue resolving them. Resulting security concerns were mitigated. Based upon a review of the pleadings and exhibits, national security eligibility for a security clearance is granted.

Statement of Case

On April 13, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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*, (AG) effective within the DOD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on May 5, 2016, and requested her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 20, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on July 20, 2016, and was received by her on July 18, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. In the FORM, Department Counsel withdrew the allegation in SOR ¶ 1.n.

Applicant responded to the FORM on September 23, 2016, which was outside of the 30-day time limit for submitting additional information. She did not object to any of the Government's Items and submitted additional documents, which I marked as Applicant Exhibit (AE) A. Department Counsel did not object to her late filing of AE A. On February 10, 2017, Applicant submitted additional exhibits, which I marked as AE B. Department Counsel did not object to AE B. Items 1 through 6, and AE A and AE B, are admitted into evidence. DOHA assigned the case to me on May 22, 2017.

Findings of Fact

Applicant is 44 years old and married for 20 years. She has worked for her current employer since 2002. She does not hold a security clearance. On November 5, 2014, Applicant submitted her first security clearance application (SF-86). (Item 3.)

Applicant stated that her financial issues began between 2011 and 2012, after her house foundation had an unexpected leak that lead to costly repairs. She was subsequently unable to pay all of her bills and high minimum monthly payments for credit cards. (Item 3, Item 4.) In September 2015, Applicant enrolled in a debt settlement program (DPS) and began making monthly payments of \$150 into the program to help resolve her debts. She documented payments from September 2015 through May 2016. (Item 2.)

Based on credit bureau reports (CBR) from November 2014 and February 2016, the SOR as amended alleged 19 delinquent debts, which included a judgment, and unpaid retail stores and credit cards. The debts totaled \$54,488 and became delinquent between 2011 and 2015. (Item 5, Item 6.)

Since enrolling in the DPS, Applicant has resolved the following 13 SOR debts between April 2016 and January 2017: ¶ 1.a (\$7,244); ¶ 1.b (\$133); ¶ 1.d (\$234); ¶ 1.f (\$315); ¶ 1.h (\$400); ¶ 1.i (\$258); ¶ 1.j (\$212); ¶ 1.k (\$85); ¶ 1.l (\$215); ¶ 1.o (\$226); ¶ 1.p (\$120); ¶ 1.q (\$149); and ¶ 1.r (\$168). These debts totaled \$9,759.² (AE B.)

Three debts were removed from Applicant's credit report because they were inaccurately reported as her debts: ¶ 1.e (\$1,664); ¶ 1.m (\$392); and ¶ 1.s (\$18,858),

² This total represents the amount alleged in the SOR. Some debts were settled for less money than alleged and others were settled for more.

which is her husband's debt. (AE B.) These debts total \$20,914. She is continuing to work on resolving three SOR debts: ¶ 1.c (\$12,623); ¶ 1.g (\$3,116); and ¶ 1.t (\$8,076). These debts total \$23,815. (AE B.)

The DSP advised Applicant to resolve smaller debts first, along with correcting inconsistencies listed in her CBR. She is starting to address the remaining three larger debts noted above. (AE B.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in determining 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes conditions that could raise security concerns. Two may be disqualifying in this case:

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

Applicant accumulated delinquent debts between 2011 and 2015, which she did not begin to address until September 2015. Some remain unresolved. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

AG ¶ 20 describes five conditions in that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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 debts became delinquent between 2011 and 2015. Although many are resolved, three large debts remain unresolved. The evidence does not establish mitigation under AG ¶ 20(a). Applicant's financial delinquencies began after she incurred an expensive repair for a crack in her house's foundation, and subsequently was unable to stay current on other bills. That was a circumstance beyond her control. Applicant did not provide information that she attempted to responsibly manage her debts while they were becoming delinquent, which evidence is required to establish full mitigation under AG ¶ 20(b). Applicant did not submit evidence that she participated in financial or credit counseling with the DSP she hired to resolve debts; however, there are clear indications that her financial issues are coming under control. AG ¶ 20(c) partially applies. Applicant made a good-faith effort to resolve 13 of the 19 alleged debts through the DSP since September 2015. She continues to work with the DSP to resolve the three largest delinquent debts. AG ¶ 20(d) applies. Applicant stated that three debts were successfully disputed and removed from her credit report. She did not support that assertion with evidence, although one large debt allegedly is her husband's debt. There is insufficient evidence to find mitigation under AG ¶ 20(e).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security 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(d):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who started resolving financial delinquencies in 2015 by working with a DSP. She paid 13 of the 19 delinquent debts and disputed 3 other debts. Having addressed those debts, she is working on the three remaining large debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.³

In this instance, Applicant provided sufficient evidence to demonstrate a meaningful track record within the scope of the term defined in the above case. The likelihood that financial problems will recur or Applicant will stop resolving the three remaining debts is minimal based on her efforts to-date and knowledge that similar problems could jeopardize her employment. The potential for pressure, coercion, or duress is eliminated by the resolution of many of Applicant's formerly outstanding debts. Overall, the record evidence leaves me without doubt as to Applicant's judgment,

³ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

eligibility, and suitability for a security clearance. She met her burden to mitigate 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.t:⁴ 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. National security eligibility is granted.

SHARI DAM
Administrative Judge

⁴ SOR ¶ 1.n was withdrawn.