



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



In the matter of:

ISCR Case No. 15-05853

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

04/28/2017

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On February 12, 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. The 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on March 14, 2016. She elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on April 20, 2016. The FORM was

mailed to Applicant, who received it on May 4, 2016. As evidence, the Government offered Items 1 through 5 (Items 1 and 2 are pleadings. Items 3-5 are evidentiary matters and are admitted without objection). Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did not submit any additional evidence or pose any objections. The case was assigned to me on April 11, 2017.

Findings of Fact

In Applicant's answer to the SOR, she essentially denied all the allegations by her explanations. After a thorough and careful review of the pleadings and evidence submitted, I make the following findings of fact.

Applicant is 32 years old. She is married (divorced from first husband), but has no children. She has worked for her current employer, a defense contractor, since June 2011. She is a high school graduate and has some college credits.¹

The SOR alleged Applicant had a collection account (car repossession) for \$12,439 (SOR ¶ 1.a); four delinquent medical accounts in the amounts of \$545, \$148, \$88, and \$38 (SOR ¶¶ 1.b – 1.c);² and a consumer collection account for \$1,334 (SOR ¶ 1.f).³

Applicant explained in her July 2011 security clearance interview that her debts were attributable to her first marriage. She left the marriage due to her ex-husband's abuse. In the divorce settlement, her ex-husband was ordered to pay the car debt (which was later repossessed) and the furniture debt (SOR ¶ 1.f). He failed to comply with the court order. Applicant attempted to locate him without success. She is making payments on her remaining medical debts. She is also paying her student loans.⁴

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 disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

¹ Item 3.

² The SOR allegations in ¶¶ 1.a – 1.d refer to a credit report dated February 19, 2015. This credit report was not included in the FORM. Only the debts listed in SOR ¶¶ 1.b and 1.e are listed in the credit report at Item 5 (dated January 28, 2016). I find in favor of Applicant regarding SOR ¶¶ 1.c and 1.d, since there is no evidence in the record to support them. Item 5

³ Items 1, 5.

⁴ Items 2, 4.

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; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts over an extended period of time. I find both 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;
- (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.

The delinquent debts attributed to Applicant are not recent and resulted from her first marriage. The two largest debts (a car repossession and a furniture debt) were her ex-husband's responsibility pursuant to their divorce property settlement. These circumstances do not cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's non-medical debts became delinquent when her ex-husband refused to honor his divorce settlement agreement obligations. This was a condition beyond Applicant's control. She attempted to locate him with no success. This showed responsible action on her part. AG ¶ 20(b) applies.

The two small medical debts that remain are being resolved. AG ¶ 20(c) and ¶ 20(d) partially apply. Applicant disputes her liability on SOR ¶¶ 1.a and 1.f based upon the terms of the divorce settlement. AG ¶ 20(e) partially applies.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There is also no requirement that an applicant pay every debt listed in the SOR, only that she remove concerns about her reliability and trustworthiness raised by those debts. See ISCR Case No. 14-00504 at 3 (App. Bd. August 4, 2014). Applicant has taken significant action to resolve his 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 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 Applicant's personal circumstances. The evidence supports her showing that she resolved or is resolving the debts. The record contains sufficient evidence to mitigate the security concerns.

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.f: 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