



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 15-06193
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

12/27/2016

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On February 20, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated December 21, 2015, detailing security concerns for financial considerations under Guideline F. 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on January 6, 2016, admitting all 15 financial allegations. Department Counsel was prepared to proceed on April 13, 2016, and the case was assigned to me on September 7, 2016. DOD issued a notice of hearing on September 29, 2016, scheduling a hearing for October 26, 2016. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 5. Applicant testified and submitted eight exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through H. I kept the record open for Applicant to submit additional documents. Applicant timely submitted one additional document consisting of six pages that I marked and admitted into the record as AX I 1 to I 5. Department Counsel had no objection to the admission of the documents. (GX 6, e-mail, dated November 2, 2016) I received the transcript of the hearing (Tr.) on November 2, 2016.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 33-year-old high school graduate who has been employed by a defense contractor as a production analyst since May 2014. She had previously worked in a nursing home, as a financial clerk, and as a production analyst for other defense contractors. She had periods of unemployment when her employer lost contracts or when she was pregnant. She never married and has one child. Her present net monthly income is approximately \$3,200, with net monthly expenses of approximately \$2,800, leaving a net monthly discretionary income of \$400. (Tr. 38-41; GX 1, e-QIP, dated February 20, 2015)

The SOR alleges, and credit reports and court documents (GX 4, credit report, dated July 11, 2015; GX 5, credit report, dated October 21, 2016; and GX 2, bankruptcy documents, filed June 24, 2015) confirm that Applicant filed a Chapter 13 bankruptcy on June 24, 2015. The SOR also alleges and the Government exhibits confirm the following delinquent debts for Applicant: a mortgage account past due for \$1,688 on a balance of \$103,543 (SOR 1.b); a delinquent credit card debt charged off for \$2,802 (SOR 1.c); a medical debt in collection for \$2,689 (SOR 1.d); a credit card charged off for \$1,072 (SOR 1.e); two delinquent medical debts for \$369 (SOR 1.f), and \$258 (SOR 1.g); a telephone account in collection for \$139 (SOR 1.h); a television service account in collection for \$121 (SOR 1.i); an eyeglass account charged off for \$116 (SOR 1.j); judgments filed on three delinquent homeowner accounts for \$537 (SOR 1.k), \$1,030 (SOR 1.l), and \$1,305 (SOR 1.m); a judgement on a delinquent credit card account for \$2,802 (SOR 1.n); and a judgment on a store account for \$819 (SOR 1.o). The credit card debts at SOR 1.c and 1.n are duplicate accounts. The total for the debts is approximately \$12,945.

Applicant's financial issues began in 2011 when her boyfriend used her credit cards without her knowledge. At the time, Applicant was a single mother supporting

herself and her child. She used her grandparent's address as her mailing address. Her relatives living near her grandparents would look through her mail and start credit card accounts in her name. Applicant was not aware of the debts incurred by her boyfriend or her relatives. She paid them as best she could when she learned about the debts. In 2012, her company lost the contract she was working on. Applicant was shifted to a new contract but her salary was about \$300 less per month. (Tr. 11-13)

Applicant was pregnant in January 2013 and about ready to give birth when her company again lost a contract. She could not be moved to another contract because of the pending birth of her child. She was forced to exhaust her sick leave and annual leave to keep employed. Her company continued to provide child care but she did not receive any compensation from her company for herself. She received unemployment compensation from the state. She had very limited support from her family and no assistance from her daughter's father. He was supposed to pay her \$350 monthly but he very rarely makes the payment. She paid her bills as best she could in spite of her financial problems. (Tr. 36-38)

Applicant was rehired by her company shortly after giving birth in early 2013. She was laid off again in February 2014, and received unemployment compensation. She was called back to work by her employer in May 2014 but at a lower salary and lesser position. She used her retirement 401K account to pay some of her debts in 2014 and 2015. She paid all of the taxes associated with the withdraw of the funds from her 401K account. She prioritized her debts and tried to stay current with her mortgage, homeowner's association fees, and her daughter's medical bills. She wanted to stay current with the medical bills so her daughter could continue to receive treatment. She was not always successful, but she was able to keep the past due amount of debt on the mortgage small. She missed payments on some homeowner's fees. Applicant also tried to pay some amount on her student loans. The student loan servicing company worked with Applicant and she paid them what and when she could. She was able to pay enough so the loans were placed in a deferred status until 2018. (Tr. 13-16, 37-30)

Applicant kept her employer informed of the status of her finances. (GX 3, Incident Reports, June and July 2014) In July 2014, Applicant tried to arrange with a credit servicing company for a consolidation of her debts so she could have only one payment plan. Her attempt was unsuccessful. (AX H, Letter, dated July 29, 2014) In December 2014, Applicant was laid off when her company completed the contract she was working. She was almost immediately rehired to work on another contract but at less pay. She contacted all of her creditors to inform them of her change in income and to negotiate new payment plans. She cashed out her retirement account. Not all of her creditors co-operated with her. She kept the same priority of paying her daughter's medical bills and her mortgage first. (Tr. 16-17)

In June 2015, Applicant filed a Chapter 13 bankruptcy. (SOR 1.a) She had assistance from a friend who provided her the funds she needed to pay the required fees to initiate the bankruptcy. About the same time as the filing of the bankruptcy, Applicant started working her present job which provided her with a better salary and the ability to pay more on her debts. Applicant's mortgage at SOR 1.b is now current.

(AX I 2 and I 3, dated October 28, 2016) The debts at SOR 1.c to 1.j, and 1.o are being paid under the bankruptcy. (Tr. 45-49; GX 2, Bankruptcy Document, dated October 24, 2016) Applicant is current with the bankruptcy payments. (AX F and AX G, Receipts dated October and November 2016) The judgments for the homeowner's fees at SOR 1.k, 1.l, and 1.m have been paid. (AX I 4, dated June 14, 2016)

Applicant provided a number of letters of recommendation. A chief warrant officer 4 was Applicant's Government supervisor on a contract from June 2014 until June 2015. She praised Applicant for having good character, being trustworthy, mission oriented, and an outstanding worker. She labeled Applicant as articulate, highly motivated, always seeking self-improvement, and a valuable asset. She recommends that Applicant be granted a security clearance. (AX A, letter, dated April 22, 2016)

A chief warrant officer 5 supervised Applicant in 2008 and 2009. She characterized Applicant as a team player who learned her job fast and performed much better than the expected standard. Applicant worked well as a team member and was always team oriented. She recommends that she be granted access to classified information. (AX B, Letter, undated)

Another former supervisor, who is retired from the Army, also praised Applicant for being a team player, goal oriented, and self-motivated. She recommends that Applicant be granted access to classified information. (AX C, Letter, undated; and AX E, Message, dated May 23, 2013) An Army colonel commanding a logistic support activity praised Applicant for a tireless work effort and efficiency under great pressure. Applicant was professional, dedicated, and hard working. (AX D, Letter, dated May 6, 2013)

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 must be considered 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 the applicant may deliberately or inadvertently fail to 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

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. (AG ¶ 18) An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. However, the security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. It is not a debt-collection procedure. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information

A person’s relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is at risk of acting inconsistently with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. Unless there are extreme circumstances, failure to pay voluntarily incurred delinquent debts raises questions about a person’s judgment and trustworthiness. One who does

not pay financial obligations in a timely and responsible fashion, may also show lack of responsibility in the proper handling of classified information. The person who is trustworthy in very small matters is also trustworthy in great matters. And the person who is dishonest in very small matters is dishonest in great ones.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Applicant had financial difficulties starting in 2011 when her boyfriend used her credit cards without permission, and she was laid off or placed in lower paying jobs by her employer. Applicant's history of delinquent debts is documented in her credit reports, incident reports from her employer, and her testimony at the hearing. Applicant's delinquent debts are a security concern. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

- (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 problems 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 has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply. Applicant incurred delinquent debt as a result of her boyfriend's unauthorized use of her credit card, being laid off from some jobs at the end of contracts, and being rehired at a reduced salary. Applicant kept her employer informed of her financial situation, established a priority for paying her bills and debts, and paid bills when she had the resources to devote to the debts. She filed a Chapter 13 bankruptcy. Bankruptcy is a legal and permissible means of resolving debt. She established that she is current with the required payments to the bankruptcy trustee. She also established that she paid in full three judgments for homeowner dues, and is current with her mortgage. She also became current with her student loans which are now in deferment.

Applicant acted reasonably under the circumstance. Applicant established her good-faith initiative to pay her debts. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that she has a reasonable plan to resolve financial problems and has taken significant action to implement that plan. Applicant established a meaningful track record of debt payment. She presented supporting information that she paid three judgments, that her other debts are being paid under the bankruptcy she filed, and that she is current with the bankruptcy payments. By paying and being current with her debts, Applicant has shown that she acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards her finances.

Applicant has shown that she is managing her personal financial obligations reasonably and responsibly, and her financial problems are behind her. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 the facts and circumstances surrounding this case. I considered the recommendations

of Applicant's former supervisors and superiors that she is honest, reliable, and trustworthy, and should be granted eligibility for access to classified information. Applicant incurred delinquent debt due to conditions beyond her control. She prioritized her debts and paid off the highest priority debts. She presented evidence that she had paid some of her debts and is current with payments in a Chapter 13 bankruptcy for her remaining delinquent debts. This information shows Applicant's responsible management of her finances, that she acted reasonably and responsibly towards her finances, and that she will continue to responsibly manage her financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

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.o: 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.

THOMAS M. CREAN
Administrative Judge