



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06393

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

05/31/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations by demonstrating a good-faith effort to pay her debts. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On March 2, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on March 23, 2016, and elected to have her case decided on the written record in lieu of a hearing. On April 28, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including

documents identified as Items 1 through 5. Applicant received the FORM on May 6, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She replied on June 30, 2016, with a narrative statement and several attachments, which are marked as Applicant's Exhibits (AE) A through G and admitted into evidence without objection. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 5 are admitted into evidence without objection. The case was assigned to me on May 4, 2017.

Findings of Fact

Applicant admitted all the delinquent debts alleged in the SOR, with explanations and two documents. Her admissions and other comments are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. She and her husband have three grown children. Applicant has worked for a defense contractor since 2000.¹ She submitted a security clearance application (SCA) in February 2015. She disclosed that she had several delinquent debts. Many of the accounts were medical debts accrued as a result of hospitalizations and surgeries.²

In the SOR, the Government alleged 12 delinquent debts totaling about \$15,485. The debts are all listed on Applicant's April 2015 credit report.³

The status of each debt is as follows:

SOR ¶¶ 1.a (\$292), 1.f (\$164), 1.g (\$117), 1.h (\$100), 1.j (\$62), 1.k (\$50) and 1.l (\$45) are all medical debts. SOR ¶ 1.b (\$1,744) is a judgment resulting from a personal loan to Applicant's husband. Applicant provided documents with her answer and FORM response that these debts have all been paid.⁴

SOR ¶ 1.c (\$10,960) is a charged-off account related to a repossessed auto. Applicant indicates that she fell behind on payments after she had several surgeries. The vehicle was repossessed in January 2014.⁵ It is unresolved.

¹ Item 3

² Item 3.

³ Item 4.

⁴ Answer; AE A - AE G.

⁵ Item 3; Answer; AE A.

SOR ¶¶ 1.d (\$1,256) and 1.e (\$606) are student loans that were placed in collection. Applicant indicates, but does not document, that she is making monthly payments on the accounts and is now current. She owes about \$1,330.⁶

SOR ¶ 1.i (\$89) is a past-due cell phone bill. Applicant inquired about the account and was told that the account was removed or closed in October 2015 due to the statute of limitations.⁷

Applicant indicated that her debts are due to her multiple surgeries and hospitalizations, as well as the fact that she and her husband have had to move five times in the past eight years due to his “constant job changes.” Applicant indicated that she understands credit and lending rates better than she did in the past. She and her husband have moved back onto family-owned property, allowing them increased financial stability. Applicant is also active in her church and her local community.⁸

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 used 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

⁶ Answer; AE A.

⁷ Answer; AE A.

⁸ AE A.

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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁹

⁹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant fell behind on her debts due to health issues, as well as her husband's employment instability and frequent moves. She accrued delinquent debts of about \$15,465. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's health issues and her husband's unstable employment led her to incur numerous delinquent debts. With some exceptions, most of them were medical debts. Applicant's financial difficulties were caused by circumstances beyond her control. She has nonetheless maintained stable employment in the defense industry since 2000. She undertook a documented good-faith effort to repay her creditors. While not all of her debts have been paid, she has established that her debts are being resolved. Her finances have stabilized, and no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) apply.

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 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 have incorporated my comments under Guideline F in my whole-person analysis. The record evidence leaves me without questions or doubts as to Applicant's eligibility 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.l: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge