



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



In the matter of:)
)
) ISCR Case No. 15-06566
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/05/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, and she mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 10, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 21, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on July 30, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit

material to refute, extenuate, or mitigate the security concerns. Applicant responded with a letter and attached documents, which I have marked as Applicant's Exhibits (AE) A through I. The case was assigned to me on May 3, 2017.

Evidentiary Issues

Item 5 of the FORM is a report of investigation (ROI) summarizing interviews conducted during Applicant's background investigation. Paragraph E3.1.20 of the Directive states that "[a]n ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." In many cases where an applicant has selected a decision on the written record, Department Counsel's FORM has included a footnote on the subject of authentication. See ISCR Case No. 12-109330 at 4-5 (App. Bd. Jun. 29, 2016). There is no footnote in this FORM. Item 5 is inadmissible. The remaining Government exhibits included in the FORM and AE A through I are admitted in evidence without objection.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. She has worked for her current employer since April 2014. She earned a bachelor's degree in 2006 and a master's degree in 2008. She married in 1998 and divorced in 2004. She does not have children.¹

The SOR alleges three delinquent student loans totaling \$20,260, a \$601 medical debt, and two delinquent debts of \$787 and \$771. The debts are listed on a credit report obtained in January 2015.²

Applicant was unemployed from November 2013 to April 2014. She settled the \$787 and \$771 debts in June 2016 for \$475 and \$465. She completed the settlement payments in July 2016.³

From July 2015 through February 2016, Applicant made six \$300 payments toward her consolidated student loans. In June 2016, she entered into an agreement with the student loan servicing agency to pay \$93 per month. She made three \$93 payments before the record closed in August 2016.⁴

Applicant was unable to identify the \$601 medical debt. She called the only two companies with the name in the SOR that she could find through an Internet search. They stated that they did not have her account. The debt is not listed on the June 2016

¹ Item 3.

² Items 2, 4.

³ Items 2, 3; AE A-H.

⁴ Items 2, 4; AE A, H, I.

credit report. She stated that she is willing to pay the debt if she owes it, but she “cannot find any information to direct [her] to contact a company to pay it.”⁵

Applicant was reprimanded by a previous employer in about June 2013 for using the company’s credit card for personal use. She stated that one of her pets had high veterinarian bills for emergency room visits. She used the credit card for things such as gas, groceries, and utilities. She paid the entire amount owed by mid-August 2013.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2015. She reported that she was delinquent on an estimated \$20,735 in student loans. I do not find that she deliberately falsified the SF 86 when she did not report the three other debts alleged in the SOR.⁷

Two questions on the SF 86 required Applicant to report her 2013 reprimand. She did not report the reprimand under either question. I interpret Applicant’s response to the SOR to be an admission that she was required to report the reprimand, but a denial that she intentionally falsified the SF 86. Applicant reported derogatory information under another question.⁸ I find there is insufficient evidence for a determination that she intentionally falsified the SF 86.

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 to be 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, administrative judges apply the guidelines 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

⁵ Items 2, 4; AE A.

⁶ Item 2. The SOR did not allege the credit card use as concerns under the personal conduct and financial considerations guidelines. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when looking at Applicant’s overall financial situation, in the application of mitigating conditions, and in the whole-person analysis. Under the personal conduct guideline, the SOR alleged that Applicant did not report the reprimand on her Questionnaire for National Security Positions (SF 86). The reprimand will be used to determine if she intentionally falsified the SF 86 when she did not report it.

⁷ Items 2, 3.

⁸ Items 2, 3.

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.”

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 the applicant or proven by Department Counsel.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard 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 EO 10865 provides that adverse 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

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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.

Applicant settled two debts, and her student loans are being repaid. She was unable to identify the medical debt, and it is not listed on the most recent credit report. Applicant has a plan to resolve her financial problems, and she has taken significant action to implement that plan. Her financial issues are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

There is insufficient evidence for a determination that Applicant intentionally falsified her SF 86. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a through 2.c are concluded for Applicant.

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 relevant 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 Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and she mitigated the financial considerations security concerns.

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
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

In light of all of the circumstances 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.

Edward W. Loughran
Administrative Judge