



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



In the matter of:)
)
) ISCR Case No. 15-06920
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2017

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On April 19, 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 (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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on May 27, 2016, and elected to have her case decided on the written record in lieu of a hearing. On June 22, 2016, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on July 6,

2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response to the FORM on August 2, 2016. It is marked as Applicant's Exhibit (AE) A and admitted into evidence without objection.¹ On May 2, 2017, Applicant submitted additional documents. Department Counsel noted an objection as to timeliness. The additional documents are marked as AE B and admitted. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 7 are admitted into evidence without objection. The case was assigned to me on April 10, 2017.

Findings of Fact

Applicant admitted all the delinquent debts alleged but for SOR ¶ 1.i, with explanations and 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 48 years old. She is a single parent with a daughter in graduate school.² Applicant has worked as a contract administrator for several federal contractors since 2003. She was laid off in August 2009. She returned to school to finish her master's degree. She was hired by her current employer in November 2009.³

Applicant submitted a security clearance application (SCA) in April 2015. She disclosed that she had delinquent debts and was pursuing credit counseling. Applicant fell behind on her own bills while helping her father and sister financially after they lost their jobs and became homeless.⁴

The SOR alleges 10 delinquent debts totaling about \$11,042. Most of them are listed on credit reports from January 2014 and April 2015. A credit report from April 2016 lists one debt.⁵

The status of each debt is as follows:

SOR ¶¶ 1.b (\$166), 1.c (\$223) and 1.e (\$44) are all medical debts. SOR ¶ 1.d (\$101) is a past due phone bill. SOR ¶ 1.h (\$130) is an overdue library bill. SOR ¶ 1.j

¹ Applicant submitted her FORM Response again by e-mail to Department Counsel on August 16, 2016. These documents are part of AE A.

² AE A.

³ Item 2; AE A.

⁴ Items 2, 3, 4, AE A.

⁵ SOR debt ¶ 1.a is found on Items 5, 6 and 7. The remaining debts are found on Items 5, 6, or both.

(\$1,724) is a past due debt to a department store. Applicant provided documentation with her answer that these debts have all been paid.⁶

Applicant denies SOR ¶ 1.i, a \$215 debt to an insurance company. She provides documentation that she is disputing the debt. She says that the insurance representative told her that the debt was charged to her in error.⁷

SOR ¶ 1.f (\$5,323) is a collection debt to a computer company. Applicant provides a document showing that the debt has now been settled and paid.⁸

SOR ¶ 1.a (\$1,724) is a department store credit card account that is in collection. SOR ¶ 1.g (\$1,259) is a duplicate of SOR ¶ 1.a. \$1,259 is the “high credit” amount for the debt, and \$1,724 is the balance owed.⁹ Applicant provides a document showing that SOR ¶ 1.a has now been settled and paid.¹⁰

Applicant indicates that the financial stability of her family members has improved. Her father has found part-time work. Her sister and her family are now able to save money. Applicant still helps her family financially, but on a smaller scale. She is now able to help pay for her daughter’s education.¹¹

Applicant states that she paid her debts on her own, without assistance from the credit counseling service. She has another credit card which she wants to pay off by fall of 2017, and wants to ensure she remains current on her student loans. She remains gainfully employed in the defense industry.¹²

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.

⁶ Item 1.

⁷ Item 1.

⁸ AE B.

⁹ Item 6 at 7, Item 7 at 1. SOR ¶ 1.g is also listed on Item 5 as an account purchased by another lender. Item 5 at 7.

¹⁰ AE A, B.

¹¹ AE A.

¹² AE B.

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.

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 EO10865 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

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.¹³

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 own debts when she began providing financial assistance to family members in dire financial straits. She accrued delinquent debts of about \$11,000. 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

¹³ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

Applicant's decision to help family members in financial need was understandable, though it caused her to fall behind on her own debts, too. Nevertheless, she undertook a documented good-faith effort to repay her creditors. Her finances have stabilized, and her family members are also in better financial condition. Applicant's debts are resolved, and no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) all 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 48 years old. She has been employed with government contractors for many years. She fell behind on her own debts while helping family members who were experiencing financial difficulties. Applicant has made a good-faith effort to pay or resolve her past due debts. Her finances have improved, and her family's situation has also stabilized. Her finances no longer raise a security concern. She has met her burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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.j: 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