



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07011

Appearances

For Government:

Aubrey De Angelis, Esquire, Department Counsel

For Applicant:

Carmel Tomlinson, Personal Representative

September 8, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on April 3, 2015. (Government Exhibit 1.) On July 12, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for*

Determining Eligibility for Access to Classified Information, effective within the Department of Defense after September 1, 2006.¹

Applicant answered the SOR in writing (Answer) on August 24, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 5, 2016. The case was assigned to me on October 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 22, 2016. I convened the hearing as scheduled on January 27, 2017.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant offered Applicant Exhibits A and B, which were admitted without objection. Applicant testified on her own behalf, and called one additional witness. DOHA received the final transcript of the hearing (Tr.) on February 6, 2017. Applicant requested that the record remain open for the receipt of additional exhibits. She submitted Applicant Exhibits C through L, which were all admitted without objection, and the record closed.

Findings of Fact

Applicant is 56 years old, and widowed. She is seeking to obtain national security eligibility for a security clearance.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has a history of having past-due debts, including tax liens. Therefore she is potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

In her Answer, Applicant admitted all of the allegations with explanations. She also submitted additional evidence to support her request for a finding of national security eligibility.

Applicant was married from January 1983 until her husband's sudden death in June 2007. During their marriage Applicant was the bread winner, while her husband was supposed to take care of their financial affairs, including preparing and filing taxes. He did not do a good job, a fact she only learned about after his death when she began to discover they had many past-due debts, including tax debts. (Answer; Tr. 18-23.)

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006; as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

The status of all of the debts alleged in the SOR is as follows:

1.a. Applicant admitted that she had a Federal tax lien filed against her in 2008 for the amount of \$1,087. After her husband's death, Applicant discovered that her husband had not been filing their Federal tax returns, or paying taxes, for many years. She began negotiating with the IRS in 2009 about back taxes. Shortly afterward Applicant began to pay off her tax debt with the Federal government. Applicant paid over \$23,000 to the IRS in accordance with her installment payment agreements over several years. Based on the extensive documentation supplied by Applicant, she is in compliance with her payment arrangements with the IRS, and all liens have been released. Based on all of the available information, this lien appears to be in error. This allegation is found for Applicant. (Applicant Exhibits C and D; Tr. 23-27, 41.)

1.b. Applicant admitted owing a past-due medical debt in the amount of \$245. She submitted documentation showing that this debt has been paid in full. It is resolved. (Applicant Exhibit B at Reference B; Tr. 36.)

1.c. Applicant admitted owing a past-due credit card debt in the amount of \$3,840. Applicant testified that she has attempted to resolve this debt without success. As described below, she is currently paying off a substantial tax debt to her state (SOR 1.i). Once she resolves the tax debt, Applicant testified that she will pay off this debt as soon as possible. (Tr. 35-36.)

1.d. Applicant admitted owing a past-due credit card debt in the amount of \$816. She submitted documentation showing that this debt has been paid in full. It is resolved. (Applicant Exhibit B at Reference D; Tr. 37.)

1.e. Applicant admitted owing a past-due credit card debt in the amount of \$1,244. She submitted documentation showing that this debt has been paid in full. It is resolved. (Applicant Exhibit B at Reference E; Tr. 38.)

1.f. Applicant admitted owing a past-due credit card debt in the amount of \$1,362. She submitted documentation showing that this debt has been paid in full. It is resolved. (Applicant Exhibit B at Reference F; Tr. 38.)

1.g. Applicant admitted owing a past-due medical debt in the amount of \$222. She submitted documentation showing that this debt has been paid in full. It is resolved. (Applicant Exhibit B at Reference G; Tr. 38.)

1.h. Applicant admitted owing a past-due credit card debt in the amount of \$1,240. Applicant reached an agreement with this creditor, and made consistent monthly payments until this debt was paid off. She submitted documentation showing that this debt has been paid in full. It is resolved. (Applicant Exhibits I, J, K, and L; Tr. 34-35.)

1.i. Applicant admitted to having a lien filed against her by her state taxing authority in the amount of \$9,449. Applicant submitted documentation showing that she has been working with her state taxing authority to resolve all of her back taxes. Once again, this action was necessary because her husband was not filing tax returns in a timely fashion, or paying the resulting taxes. She submitted evidence showing that she entered into a payment agreement with the state in April 2016, and has been making consistent payments since then. The payments are taken out of her bank account automatically. The tax debt as of February 7, 2017, was \$11,837. This debt is being resolved. (Applicant Exhibits A at Reference 4, E, F, G, and H; Tr. 30-34, 41-42, 46-48.)

Applicant's current financial situation is stable. She makes a sufficient income, is able to maintain her household without problems, and the most recent credit report in the record shows no new delinquent accounts. In addition to herself, Applicant provides financial support for her disabled brother. (Government Exhibit 5; Tr. 27-30, 43-45, 49-55.)

Mitigation

A co-worker of Applicant's testified on her behalf. The witness extolled Applicant's abilities, her trustworthiness, and strongly recommended her for a position of trust. (Tr. 57-63.) She also submitted letters of recommendation from her current supervisor, a former supervisor, and two other co-workers. (Applicant Exhibit A at Reference 5.) Her former supervisor states, "She [Applicant] is always dependable, reliable, hard-working, conscientious, honest, [and] courteous." The other letters are of similar import.

Policies

When evaluating an applicant's suitability for national security eligibility and a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security

eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had several past-due debts, as well as tax liens. All three of these conditions apply, thereby shifting the burden to Applicant to mitigate them.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant faced serious and unexpected financial difficulties after the sudden death of her husband in 2007. In addition to the normal emotional and financial difficulties facing new widows, Applicant quickly discovered that her husband had not been truthful with her about their financial situation. She has worked diligently for several years to resolve her tax issues with the IRS, and has successfully done so. She is current on an acceptable payment plan with her state taxing authority. Applicant has paid all but one of the past-due debts alleged in the SOR. As her financial situation gets more stable, she credibly testified that she will pay that debt as well. The Appeal Board has stated, "An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken significant actions to

implement that plan.”² Her current financial status is stable, and she evinces a credible intent and ability to maintain that stability into the future. She has fully mitigated all the allegations in the SOR. Paragraph 1 is found 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(d):

(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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding her financial situation. Overall, the record evidence does not create substantial doubt as to Applicant’s present suitability for national security eligibility, and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.i:

For Applicant

²ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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 or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge