



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



In the matter of:)
)
) ISCR Case No. 15-07272
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

07/14/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 18, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on June 2, 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 August 1, 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 received the FORM on August 9, 2016. She responded with documents, which I have marked as Applicant's Exhibits (AE) A through E. The case was assigned to me on May 25, 2017. The Government exhibits included in the FORM and AE A through E are admitted in evidence without objection.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. She served on active duty in the U.S. military from 2003 until she was honorably discharged in 2011. She deployed to Iraq and Afghanistan during her military service. She has an associate's degree, which was awarded in 2015. She is married with a child and a stepchild.¹

Applicant's husband was also in the military. After their discharges, they both had periods of unemployment. They were unable to pay all their bills, and several debts became delinquent. The SOR alleges a past-due mortgage loan; a past-due debt to a bank; a \$226 delinquent utility account; and that Applicant did not file her 2014 state and federal income tax returns as required. The three debts are listed on a credit report obtained in April 2015.²

Applicant moved to another state after her discharge from the military. She owned a house near the military installation where she spent the majority of her military career. Her tenants severely damaged the property before they moved out. Applicant was unable to rent the property because of the damage, and she could not afford to repair it. She attempted to sell the property. The house was on the market 732 days. The house went into foreclosure and was obtained by the lender in August 2015.³

The lender issued an IRS Form 1099-A, which listed the balance of the principal outstanding on the mortgage loan as \$81,798, and the fair market value of the property as \$50,000. The house was sold to the Secretary of Veterans Affairs (VA) for \$42,525. The lender received the sale price plus an additional \$34,364 from the VA as part of its loan guaranty. The lender wrote off the deficiency balance of \$12,344 and held Applicant harmless for the deficiency balance.⁴

SOR 1.b alleges and the credit report establishes that Applicant was \$157 past due on a debt to a bank with a \$5,205 balance. Applicant stated this was a loan for a motorcycle for her husband to lower his commuting costs. They were unable to sell the motorcycle to pay off the loan. Applicant was working with the creditor to resolve the debt.⁵

Applicant denied owing the \$226 delinquent utility account (SOR 1.d). She stated they paid the balance in full before they were permitted to switch to a prepaid plan,

¹ Items 2, 3; AE D.

² Items 2-4; AE D.

³ Items 1-4; AE D.

⁴ Items 1; AE C.

⁵ Items 1, 4.

which is less costly. She disputed the debt, but the results of the dispute are not in the record.⁶

Applicant did not work while she attended college from February 2013 through 2015 in order to obtain the skills required for her current employment. She was supported by her husband and GI Bill payments, which are tax free.⁷ Applicant reported on her April 2015 Questionnaire for National Security Positions (SF 86), during her background interview in May 2015, and in response to the SOR that she did not file her 2014 federal income tax returns when they were due. Despite those admissions, it is unclear that Applicant was required to file a federal income tax return in 2014.⁸ Applicant lives in a state that has no state income tax.⁹

Applicant and her husband retained a tax professional who prepared and filed their 2014 and 2015 joint federal income tax returns in June 2016. The 2014 return indicated they were due a \$5,123 refund. The 2015 return indicated they were due a \$5,276 refund.¹⁰

Applicant paid several debts that were not alleged in the SOR. She stated that her finances have gotten better. She lives within her means, and she intends to pay her debts on time.¹¹

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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.

⁶ Items 1, 4.

⁷ See <https://www.irs.gov/individuals/tax-exclusion-for-veterans-education-benefits>.

⁸ See <https://www.irs.gov/pub/irs-prior/i1040gi--2014.pdf>.

⁹ Items 1-3; AE D.

¹⁰ AE A, B.

¹¹ Items 2-4; AE D.

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(a), 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 the 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 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 personnel 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

19(a) inability to satisfy debts;

19(c) a history of not meeting financial obligations;

19(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;

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;

20(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;

20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

20(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; and

20(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 was unable to pay her financial obligations. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The evidence is less clear as to AG ¶ 19(g). Applicant did not work while she was in college in 2014. Her GI Bill payments are tax free. Her husband was required to file a federal income tax return, but it is unclear whether she had the income that would have required her to file a return. In any event, Applicant and her husband filed 2014 and 2015 joint federal income tax returns in June 2016. The returns indicated they were due refunds of more than \$10,000. Any failure on Applicant's part to file a 2014 federal income tax return is mitigated under AG ¶ 20(g).

Applicant and her husband both had periods of unemployment after they were discharged from the military. Her rental house near the installation where she spent the majority of her military career was severely damaged by tenants, making it impossible to rent and almost impossible to sell. It was on the market 732 days. After the house was foreclosed, the lender held Applicant harmless for the deficiency balance of \$12,344.

Applicant paid several debts that were not alleged in the SOR. She stated that her finances have gotten better; she lives within her means; and she intends to pay her debts on time. The \$226 delinquent utility account and the loan for a motorcycle that was \$157 past due were not resolved when the record closed. However, I am convinced that she now has control of her finances, and her financial problems will be rectified. Financial considerations security concerns are mitigated.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

I considered Applicant's honorable military service, particularly her deployments to Iraq and Afghanistan. I considered the cause of her financial problems and the steps

she has taken to improve them. Her finances are not perfect, but I am convinced that she will continue her efforts to rectify them.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.d: | 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.

Edward W. Loughran
Administrative Judge