



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



In the matter of:

ISCR Case No. 15-07839

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

October 12, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns raised by her past bankruptcy and delinquent accounts because they were incurred due to circumstances beyond her control and she has acted reasonably in addressing her delinquencies. Eligibility for access to classified information is granted.

Statement of the Case

On May 29, 2016, the Department of Defense Consolidated Adjudications Facility 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on June 30, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on August 17,

2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 25, 2016, and the hearing was convened as scheduled on September 23, 2016. The Government offered Exhibit (GE) 1 through 5, which were admitted without objection. The Applicant offered Exhibit (AE) A through X, which were admitted without objection, called one witness, and testified on her own behalf. She also submitted one post-hearing exhibit marked and admitted without objection as AE Y. DOHA received the transcript of the hearing (Tr.) on October 7, 2016.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. She is divorced from her first husband, and married her second husband in March 2015. She has three children, ages 1, 6, and 10. She also has a step-son, age 7. (Tr. 54-56.)

The SOR alleges Applicant filed Chapter 7 bankruptcy, which was discharged in May 2012, and is indebted on 16 additional delinquent debts in the total approximate amount of \$69,260. In her Answer, Applicant admitted SOR subparagraphs 1.a, 1.b, and 1.p. She denied SOR subparagraphs 1.c through 1.o, and 1.q. (Answer; Tr. 8.) Her debts are found listed in credit reports dated June 4, 2015, and August 8, 2016. (GE 3; GE 4.).

Applicant filed Chapter 7 bankruptcy in January 2012. She identified liabilities totaling \$107,649, including \$71,504 in student loan obligations. Her debts, other than her student loans, were discharged in May 2012. The bankruptcy filing was preceded by two separate circumstances beyond her control. In 2009 her son was born with a “breathing issue,” and had to be hospitalized in a neonatal intensive care unit, which caused extensive medical bills. Additionally, in 2011 Applicant was assaulted by her then husband. The police were called and Applicant’s then husband, now ex-husband, was incarcerated as a result of the incident. She became the sole support for the family. The assault on Applicant led to the involvement of child protective services, because “the assault was so bad they were afraid for [her] children, that [she] wasn’t going to be able to protect them.” (Tr. 26.) As a result, Applicant was constantly in court, incurring costly legal fees, and suffering from stress that caused her to enter therapy. She lost her job in late 2011, which compounded her financial difficulties. (AE A; Tr. 24-27.)

Since 2012, Applicant has been employed in eight different jobs. She admitted that she was “fired” from one job, but the rest of the periods of unemployment were due to contracts that ended. She was unemployed from February to March 2014; April to June 2014; August to October 2014; January to March of 2015; and April to May 2015; because she was between contracts. She testified that she made efforts to repay her debts during periods of employment, but could not afford to do so when she was unemployed. (Tr. 29, 49-54, 64.)

The SOR alleged that Applicant was indebted on four student loan accounts, as stated in subparagraphs 1.b, 1.c, 1.d, and 1.e, totaling \$65,537. These debts became delinquent between 2009 and 2010, and were listed on Applicant’s Chapter 7 bankruptcy filing. A representative of the creditor testified that Applicant has had three

student loan accounts with their dispute resolution department. She currently owes on a \$37,496.79 consolidated loan (subparagraph 1.b), and a \$28,196.24 consolidated student loan (subparagraph 1.c). Applicant's Pell grant is paid in full. The account number on the Pell grant matched the debt alleged in SOR subparagraph 1.d, which was duplicated in subparagraph 1.e. The remaining two delinquent accounts are identified by the creditor, using the same account number. Payments made to this creditor are applied to both of the remaining delinquent accounts. Applicant documented she has a payment agreement with this creditor. The terms of the agreement require her to make nine consecutive monthly payments of \$323. The creditor will then take the loans out of default status. She has made five consecutive payments between June 2016 and October 2016. She also provided documentation of prior payments of \$323 in August 2015 through November 2015; and February 2016. She was unable to continue regular monthly payments at that time, due to periods of unemployment. However, she testified she intends to continue to make her monthly payments until this debt is resolved. (AE B; AE C; AE E; AE Y; AE T; AE V; Tr. 28-32, 57-58, 73-79.)

The SOR alleged that Applicant was indebted on five parking tickets and a library fine owed to her city government, as stated in subparagraphs 1.f, 1.g, 1.h, 1.i, 1.j, and 1.k, totaling \$719. These debts became delinquent between 2011 and 2014. Applicant had previously paid the underlying fines, but did not know of the additional interest assessed due to late payments. Applicant presented documentation that shows each of these debts have been fully resolved. (AE D; AE E; AE F; AE G; AE H; AE I; Tr. 35-37, 58-61, 70-72.)

The SOR alleged that Applicant was indebted on a medical account, as stated in subparagraph 1.l, in the amount of \$1,216. Applicant is making payments of \$100 per month to this creditor. She documented four consecutive payments under this agreement. She intends to continue to make payments on this debt until it is fully resolved. (AE J; AE U; Tr. 37.)

The SOR alleged that Applicant was indebted on a medical account, as stated in subparagraph 1.m, in the amount of \$823. Applicant contested this debt with the creditor because she had been "double billed" for this debt. On June 20, 2016, she received a letter from this creditor that stated the account had been removed from her credit file. This debt is resolved. (AE K; Tr. 38, 62.)

The SOR alleged that Applicant was indebted on a medical account, as stated in subparagraph 1.n, in the amount of \$486. Applicant repaid this debt in full on June 20, 2016. This debt is resolved. (AE L; Tr. 38.)

The SOR alleged that Applicant was indebted on a medical account, as stated in subparagraph 1.o, in the amount of \$204. This debt became delinquent in 2014. Applicant presented a receipt that shows she repaid this debt in July 2016. This debt is resolved. (AE M; Tr. 38-40.)

The SOR alleged that Applicant was indebted on a child care debt, as stated in subparagraph 1.p, in the amount of \$155. This debt became delinquent in 2014.

Applicant presented documentation that shows she resolved this debt in July 2016. This debt is resolved. (AE N; Tr. 40.)

The SOR alleged that Applicant was indebted on a collection account, as stated in subparagraph 1.q, in the amount of \$120. Applicant testified she paid this debt and presented a letter from the creditor that shows a zero balance. (AE O; Tr. 40-41.)

Applicant introduced documentation to show she is current on all of her other monthly financial obligations, including her utility bills, cell phone bill, and car payment. Her landlord indicated in an email that she pays her rent on time and is a good tenant. Her most recent credit report reflects no new delinquencies. She has no credit cards. She participated in financial counseling during her bankruptcy. She has also watched YouTube videos on creating a budget and money management. She testified she employs the strategies she learned. Her monthly budget shows she has money left over after paying her expenses. (AE P; AE R; AE X, Tr. 64.)

Applicant presented a reference letter from her contracting officer that indicates she is reliable and trustworthy. Applicant's sister and parents wrote letters on Applicant's behalf, indicating Applicant is honest, trustworthy, and a good mother. Family friends wrote letters indicating Applicant is trustworthy, hardworking, and honest. Applicant has earned two certificates for her job performance. (AE Q; AE W.)

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 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 AG ¶ 2(a), describing 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.

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 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 access to classified information. 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 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, as follows:

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 concern under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant's credit reports reflected 16 delinquent debts in the total amount of \$69,260, after a Chapter 7 bankruptcy discharge in 2012. These debts established a history of delinquencies. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Five Financial Considerations 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;
- (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's bankruptcy and subsequent financial problems occurred under unusual circumstances that are unlikely to recur, including: her son's medical condition at birth; an incident of domestic abuse with her ex-husband that led to his incarceration and loss of his financial support; and periods of unemployment. Despite her financial setbacks and difficult life circumstances, she has diligently worked to address her debts as funds would allow. She successfully contested one duplicate debt (subparagraph 1.m). She has fully resolved all but three of her SOR-listed debts. Those remaining debts, including two student loans and a medical account, are being repaid through monthly payments under agreements with the creditors. She has no credit cards or new delinquencies identified on her credit report. She maintains a monthly budget and has successfully made a series of payments to her remaining creditors. Her past indebtedness does not cast doubt on her current reliability, trustworthiness, or good judgment. All of the above mitigating conditions were established by Applicant's evidence.

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 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 well respected by those that wrote letters on her behalf. She has a reputation for honesty and trustworthiness. While she has experienced significant financial difficulties due to events beyond her control, she is working hard to resolve her remaining delinquencies. She is committed to continuing with her payment plans and resolving her remaining three accounts. While her student loan debt is significant, she has demonstrated a recent history of making payments. She can be trusted to continue making payments under those agreements. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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 through 1.q: 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.

Jennifer I. Goldstein
Administrative Judge