



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07871

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

11/23/2016

Decision

HOWE, Philip S., Administrative Judge:

On June 18, 2015, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On February 16, 2016, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on February 22, 2016. She answered the SOR in writing on March 20, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 18, 2016, and I received the case assignment on June 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on August 31, 2016, and I convened the hearing as scheduled on September 16, 2016. The Government offered Exhibits 1

through 3, which were received without objection. Applicant testified on her own behalf and submitted Exhibits A through J, without objection. DOHA received the transcript of the hearing (Tr.) on September 28, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted

Findings of Fact

In her Answer to the SOR, Applicant admitted all ten allegations. She also provided additional information to support her request for a finding of eligibility for a security clearance.

Applicant is 31 years old, divorced twice and does not have any children. Applicant's husbands abused her and she divorced them. Her second husband controlled her finances and would not let her pay her debts, instead using her income and assets for his own benefit. She testified she learned from her two marriages to abusive men not to repeat those relationships. Prior to that marriage, she had paid her debts on time and purchased her home when she was 21 years old. She now lives with her sister and has no regular employment. She served in the U.S. Air Force for eight years, rising to the rank of staff sergeant. Applicant deployed overseas four times during her service. She is three classes short of having a bachelor's degree. She had a security clearance while serving in the Air Force. She receives about \$1,700 monthly in Veterans Administration (VA) benefits. (Tr. 14, 26, 30-42; Exhibit 1)

The SOR lists ten delinquent debts owed by Applicant. Two debts are duplicates. They total \$139,480. The debts include a mortgage in foreclosure, two credit cards, a credit union loan, three telephone debts, a power company debt, and two medical debts. Applicant resolved all of her delinquent debts by payment, or installment payment agreements, or other methods. (Tr. 40-53; Exhibits 1-3, A to J)

Applicant owed \$1,447 to a credit card company on a judgment (Subparagraph 1.a). This debt is also listed in the SOR for \$1,293 (Subparagraph 1.d). Applicant submitted as an exhibit a release of judgment showing the debt was paid. She settled the debt for \$723, paying \$600 on March 2, 2016, and \$123 on April 2, 2016. This debt is resolved. (Tr. 43-45; Exhibits 2, 3, A, B, I)

The mortgage on Applicant's house was written off and she was released from the mortgage balance of \$138,476, according to the letter from the mortgage holder dated February 9, 2016 (Subparagraph 1.b). This mortgage debt is resolved. (Tr. 47, 48; Exhibits 2, 3, A, C, I)

Applicant owed a credit union \$12,497 (Subparagraph 1.c). She settled the debt for \$6,789.60 payable in 18 monthly installments of \$377.20 until the final payment in September 30, 2017. This installment arrangement is dated April 4, 2016. Applicant testified she makes all her monthly payments regularly from her disability income. This debt is being resolved. (Tr. 50; Exhibits 2, 3, A, D, I)

Applicant owed three debts to a telephone company (Subparagraphs 1.e, 1.f, and 1.g). She settled each account and paid the settlement amounts. She settled one account for \$377.33, the second debt for \$310.79, and the third debt for \$375.46, about a third of each original debt. These debts were settled and paid on February 24, 2016. They are resolved. (Tr. 50-52; Exhibits 2, 3, A, E, F, G, I)

Applicant owed an electric power company \$339 for service provided to her former residence (Subparagraph 1.h). She resolved this debt in February 2013. (Tr. 51, 52; Exhibits 2, 3, H, I)

Applicant has two medical debts for \$137 and \$86, which resulted from an injury suffered in a job after her military service (Subparagraphs 1.i and 1.j). The employer's worker's compensation plan paid these debts and they are resolved. (Tr. 52; Exhibits 2, 3, A, H, I)

Applicant submitted a monthly budget showing her disability income and her expenses with a net remainder income of \$561.23. Applicant does not have any credit cards, using only debit cards. Her federal and state income taxes are paid. (Tr. 49, 55, 56; Exhibits 2, 3, J)

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 useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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 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 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 Executive Order 10865 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$139,480 in delinquent debt from 2008 to the present time that remained unpaid. Applicant has nine delinquent debts listed in the SOR (two debts being duplicates of each other). The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Four conditions may be 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;
- (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
- (f) the affluence resulted from a legal source of income.

Applicant's second husband did not allow her to spend money on her financial obligations. He controlled her and her spending. Her financial situation occurred under unusual circumstances in her second marriage. She divorced that husband and resumed control of her finances. She resolved her debts. It is unlikely to recur because Applicant testified she learned her lesson about abusive and controlling husbands. Her situation and response to the actions of her former husband do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20 (a) is established by her responsible actions in resolving her debts.

Applicant's financial problems arose during her second marriage because her husband abused her and controlled her money. He would not allow her to pay her debts, so they became delinquent. Her home went into foreclosure. She finally divorced that man and worked to resolve her debts as she applied for other employment and relied on her disability income to repay her debts. AG ¶ 20 (b) is established by her responsible actions in resolving her debts.

Applicant paid her debts in an orderly manner. Therefore, there are clear indications from the evidence she presented that the financial problems are under control and being resolved. AG ¶ 20 (c) is established.

Applicant paid her delinquent debts. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay her delinquent debts.

The remaining mitigating conditions are not applicable to the facts in this case.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant resolved her debts. She acted responsibly. She has not repeated the actions leading to her financial delinquencies. She realizes her error in marrying her second husband who abused her and took her money.

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 mitigated the security concerns arising from her financial considerations.

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
Subparagraph 1.a to 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge