



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08645

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

04/17/2017

Decision

LYNCH, Noreen A., Administrative Judge:

On June 13, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2016. A notice of hearing, dated January 23, 2017 was issued, scheduling the case for March 16, 2017. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified, presented one witness, and submitted Applicant Exhibits (AX) A-D, which were admitted without objection. I kept the record open until April 6, 2017 for additional submissions, and Applicant submitted two documents, which were marked as AX E and AX F, and admitted into the record without objection. The transcript was received on

March 24, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant denied three allegations in the SOR and admitted one allegation under Guideline F, with explanations for each item.

Applicant is 52 years old. She received her undergraduate degree in 1996. She is married and has two adult children. She works as a business analyst for a government contractor. She has been employed with the same employer for 20 years. Applicant has held a security clearance for 30 years. (Tr. 11) She completed a security clearance application in 2015. (GX 1)

Applicant's husband lost employment in about 2009, and when he eventually found new employment, it was at a greatly reduced rate. Financial distress occurred due to the couple having two full-time incomes and being reduced to one income. (Tr. 38) Applicant and her husband were not living above their means. They had earlier purchased a home, which had a second mortgage, and that account became delinquent after her husband lost his job. Applicant and her husband signed a negotiated agreement to settle for an amount of \$35,000. (Tr. 13; AX B)

Applicant's husband testified that when he was laid off in 2009, due to his complaint against the company, he was in a non-pay status. (Tr. 80) He also could not take funds from his 401(k). He had a series of jobs after the initial lay off. He received severance pay from the initial job. He was unemployed for a total of more than six or eight months during the period of 2009 to 2013. He noted that he borrowed from his savings to pay all bills. (Tr. 92) He also testified that his wife (Applicant) paid the account that is alleged in SOR ¶ 1.d. (Tr. 92) Applicant noted on her security clearance application that the account was paid. (GX 1)

The SOR alleges delinquent debts¹, including a charged-off home equity loan, a 2009 judgment, a collection account; and a voluntary petition for a Chapter 13 bankruptcy which was dismissed in 2009. (GX 3-5) The credit report from 2015 reflected at least five accounts as "pays as agreed." It also showed the judgement that had been satisfied as not paid. There was no recent credit report in the record.

As to the SOR allegations in 1.a, Applicant denied that the bankruptcy was dismissed for failure to file a credit matrix. Her bankruptcy lawyer withdrew the petition in 2009 and advised Applicant to contact a credit counseling service to negotiate with their creditors to pay credit card debt. An agreement was signed on October 23, 2009. (Attachment A)

¹At the beginning of the hearing, the Government moved to withdraw allegation 1.b in the SOR because the judgement was satisfied in 2010. Thus, allegation 1.b. was withdrawn.

At issue in SOR debt 1.c for a collection account in the amount of \$54,415.00, a settlement was arranged for \$35,000 as discussed above. Applicant provided documentation from the company that it was paid in 2016 and the balance on the account is zero. (AX E)

As to SOR allegation 1.d for a collection account in the amount of \$7,073, Applicant reported to the investigator that this credit account was paid in 2011. She called the bank and was told that a form 1099-C was sent in 2015. She did not recall that this was the case. Applicant had previously called the bank and was told that there was no record of the debt, and it does not appear on her current credit report. (AX F)

Applicant paid other non-SOR accounts which are reflected in both the 2015 credit report and GX 1. Applicant acknowledged she borrowed from savings to pay bills. (Tr. 59)

Applicant's employment position is stable with good health benefits. Applicant's annual salary is about \$53,000. (AX A) Her husband earns about \$144,000. (AX A) She has a retirement account and savings account. Applicant's vehicle is paid. Applicant is current with all her expenses. She has no credit card. She obtained financial counseling through the credit service. (Tr. 62)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Applicant admitted she owed some delinquent debts and incurred the charged-off account for her second mortgage. The Government produced credible evidence of the debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 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) partially applies. The financial distress began when Applicant's husband was unemployed and the family was supported on Applicant's income. They are both employed and have no delinquent debt.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. As noted above, Applicant's financial difficulties began with the loss of her husband's income. They sought the assistance of a lawyer to file a bankruptcy petition, but decided to investigate the services of a credit company to settle their bills, and let the bankruptcy petition be dismissed. They paid what they could afford and entered into a plan with payments for another account.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant took steps to pay non-SOR debts years ago. She has resolved the debts alleged on the SOR, and her 2015 credit report shows many accounts "pay as agreed." FC MC AG ¶ 20(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) applies.

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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 52 years old. Applicant has held a security clearance for 30 years without incident. She has worked for the same employer for 20 years. Applicant was financially sound until her husband lost his income. Her income alone without any support from his ex-wife did not allow her to pay bills and stay current with the second mortgage. She has paid other non-SOR bills. Her credible testimony and documentation provided convince me that in this case, she acted in a trustworthy and responsible manner.

Applicant has shown sound judgment and reliability throughout the years. She is currently in good financial status. She persuaded me that she mitigated the Government's case concerning security concerns under the financial considerations guideline. She met her burden of proof.

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 a security clearance. Clearance is granted.

NOREEN A. LYNCH
Administrative Judge