



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03231

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: Richard L. Morris, Esq.

11/13/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding her financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On October 30, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 (AGs) implemented by DOD on September 1, 2006.

Effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position were established to supercede all previously issued national security adjudicative criteria or guidelines. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect as of the issuance of the SOR would not change the decision in this case.

Applicant responded to the SOR on December 28, 2015, and requested a hearing. The case was initially assigned to other judges (in May 2016 and October 2016, respectively), and was reassigned to me on March 2, 2017. The case was scheduled for hearing on April 25, 2017. The Government's case consisted of four exhibits (GEs 1-4) Applicant relied on one witness (herself) and 13 exhibits. The transcript (Tr.) was received on May 4, 2017.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with financial updates on the status of her debts. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant documented a payoff of SOR medical debt ¶ 1.y, updates to her debt management plan, a summary of her medical insurance coverage, and an affidavit of her husband detailing his personal background, his marital relationship with Applicant, and Applicant's health issues. Applicant's submissions were admitted without objection as AEs N-Q.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred a judgment, entered in October 2015 for \$1,759 and (b) accumulated 25 delinquent debts exceeding \$17,000. Allegedly, the judgment and delinquent debts remain outstanding.

In her response to the SOR, Applicant admitted all of the listed SOR allegations with explanations. She claimed that the SOR ¶ 1.a judgment debt was satisfied. She claimed that SOR ¶¶ 1.b-1.z resulted from a combination of major health issues in 2010 and unemployment between February 2013 and October 2013. She claimed, too, that while unemployed in 2013 she lacked health insurance and could not cover her accumulated medical bills with her diminished income.

Findings of Fact

Applicant is a 36-year-old training consultant for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant met her husband in 2002 while serving aboard a U.S. Navy ship. (AE Q) She married in May 2007 and has a stepson (age eight) from this marriage. (GEs 1 and 4 and AE Q; Tr. 21) She earned a high school diploma in August 2000 and reported no post-high school education credits. (GEs 1 and 4) Applicant enlisted in the Navy in October 2001 and served 25 months of active duty. (GE 1 and AE D) She received an honorable discharge in November 2003. (GE 1 and AE A and D; Tr. 17-18)

Since September 2013, Applicant has worked for her current contractor. (GE 1; Tr. 36) Between February 2013 and August 2013, she was unemployed. (GE 1) She was employed by another defense contractor between July 2005 and February 2013 as a specification writer before she was fired for alleged overcharging of labor hours while missing too much work due to health issues. (GEs 1 and 4; Tr. 24-25, 36-37) Previously (between January 2004 and June 2005), she was employed as a planner for a defense contractor. (GEs 1 and 4; Tr. 18)

Applicant's finances

Applicant accumulated a number of delinquent debts in 2013 (mostly medical) following her termination from her defense contractor employer in February 2013. She encountered serious medical issues in 2010 that contributed to a 2012 diagnosis of an autoimmune disease that can impact the heart. (Tr. 22-23) While unemployed, she had no medical insurance of her own, and none from her husband's employer. Currently, her medical condition is under control with medication. (Tr. 35)

Applicant's delinquent debts covered in the SOR included an entered judgment of \$1,759 plus costs and attorneys fees, entered in June 2013, and 25 additional debts. Many of the debts (including the judgment covered by SOR ¶ 1.a) have been paid or resolved: SOR debts ¶¶ 1.a (\$1,749), 1.t (\$85.00), 1.u (\$64), 1.v (\$57.00), 1.w (\$55), 1.x (\$38), 1.y (\$34), and 1.z (\$200), for a total of \$2,392. (GEs 2-4 and AEs M, O, and S; Tr. 28-33). Some of the listed debts are included in Applicant's debt-consolidation plan that she approved in May 2017: SOR debts ¶¶ 1.c (\$3,792), 1.d (\$1,023), 1.e (\$1,013), 1.j (\$393), 1.n (\$230), and 1.r (\$139), for a total of \$6,702. (AEs M and T; Tr. 28-33)

To be sure, many of the listed debts in the SOR have not been paid or otherwise resolved through payment plans or other payment options: SOR debts ¶¶ 1.b (\$5,930), 1.f (\$987), 1.h (\$693), 1.g (\$836), 1.i (\$502), 1.k (\$370), 1.l (\$278), 1.m (\$245), and 1.q (\$145), for a total of \$12,364. (AEs M and T; Tr. 28-33) After looking at these debts included in her latest credit report and discussing them with her credit counselor, Applicant is committed to contacting these creditors to resolve any outstanding balances. (Tr. 31) Applicant's assurances are credible and accepted.

Under the terms of her installment agreement she approved in May 2017, Applicant agreed to make a start-up payment of \$286.90 in May 2017 and monthly payments thereafter of \$211.60 from June 2017 through April 2019. (AE M). She agreed,

too, to budget her calculated indebtedness of \$4,373 for the completion of her debt-consolidation agreement, plus any finance charges or interest accruing under the existing terms of her agreement. (AE M) In her budget plan incorporated in her debt consolidation agreement, Applicant listed her current monthly income of \$3,144 and her husband's monthly GI Bill education benefits of \$1,600 and teaching position. (AE M) She also documented her benefits portfolio that covers her medical insurance dental insurance, vision insurance, and health care temporary tool, which together runs close to \$800 a month. (AE P) Her benefits portfolio includes a health savings account and other protection plans. (AE P) Applicant fully expects her husband to contribute to her debt consolidation plan, which he is committed to doing. (AE Q; Tr. 49)

Applicant calculated her monthly living expenses to total \$1,752 and estimated an additional \$1,774 a month to cover her variable and periodic expenses, bringing her total monthly expenses to \$3,526. (AE M) This is a little higher than the \$3,139 she estimated for her monthly expenses in the undated financial statement she furnished. (AE B) Under Applicant's current budget summary included in her debt consolidation plan (which takes into account a monthly debt payment of \$175), she retains a monthly surplus of \$1,043.

Amplifying on her estimated remainder, Applicant indicated she expects a reduction in her current estimated surplus to just \$38.40 under her proposed budget that factors in her debt consolidation payments (slightly more than the \$5.00 monthly remainder she estimated in the financial statement she provided). *Compare* the financial information included in AE M with the information covered in AE B.

Character references and performance evaluations

Applicant is well-regarded by her coworkers, family members, and friends. (AEs I-K) Co-workers credit Applicant with integrity, strong moral values, dependability, and devotion to her family. They characterized her as honest and forthright in all of her professional relationships. (AE J) Family members and friends who have known Applicant for many years describe her as a person of good character who can be trusted with their children and property interests. (AE I and K)

Applicant's past performance evaluations reflect excellent job performance in support of her employer's important missions. (AE E) She is credited with exhibiting excellent problem solving skills and devotion to her employer's missions. (AE E) Her supervisors praised her leadership abilities, hard work and steadfast devotion to duty. (AE E) Attesting to her strong work ethic, too, is her husband, who credited her determination and commitments to her family despite her challenges with medical issues, job loss, and financial struggles. (AE Q)

Besides her strong character references and performance evaluations, Applicant provided documentation of her active voter registration, current driving privileges in her state of residence, evidence of a clean criminal record in her neighboring state, and evidence of security training. (AEs F-H and L)

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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 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 of

dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's accrual of delinquent debts (mostly medical). Applicant's incurring of delinquent medical and consumer debts in 2013 warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19 b), "unwillingness to satisfy debts regardless of the ability to do so"; and 19(c), "a history of not meeting financial obligations."

Applicant's pleading admissions with respect to her accumulation of delinquent medical and consumer debts negate the need for any independent proof. See

McCormick on Evidence, § 262 (6th ed. 2006). Each of Applicant's delinquent medical and consumer debts are fully documented in her credit reports and summary of interview by an investigator of the Office of Personnel Management (OPM), and they create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect privacy information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles her to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Extenuating circumstances (i.e., unemployment and personal medical issues) have accounted for a good deal of Applicant's financial problems with her medical and consumer creditors. MC ¶ 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances," substantially applies to Applicant's situation.

Since her return to full-time employment in September 2013, Applicant has made considerable progress in addressing her delinquent medical and consumer debts while facing ongoing medical issues. Most of her medical and consumer debts have either been paid or are subject to a debt consolidation plan. Applicant is committed to contacting the remaining creditors listed in her most recent credit report and resolving any outstanding balances with help from her husband. Applicant's responsible efforts in addressing her debts with the limited resources available to her during periods of unemployment, accompanied by serious medical issues sans medical insurance coverage, enable her to be credited with meeting the acting responsibly under the circumstances prong of MC ¶ 20(b). See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

Applicant's corrective steps taken to resolve her medical and consumer debts through a combination of payments and a debt consolidation plan enable her to avail herself of the mitigation benefits of MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." And the financial counseling and budgeting she completed while enrolled in her debt consolidation plan, warrant application of MC ¶ 20 (c), "the individual has received or is receiving 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," to the facts of her case.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted) In Applicant's case, her demonstrated responsible efforts in

addressing her SOR-listed medical and consumer obligations enable favorable findings and conclusions to be reached with respect to security concerns raised in connection with her security clearance application.

Whole-person assessment is favorable to Applicant. She has shown sufficient progress to date in addressing her delinquent medical and consumer debts covered in the SOR to merit positive overall credit. The contributions she is credited with making to her company and the defense industry generally, the high regard in which she is held by her supervisors, coworkers, family members, and friends who have worked closely with her, should serve her well in working her budget plan. Other positive developments worth noting are her demonstrated voter registration and driving eligibility and good standing with law enforcement in her state. Overall, Applicant's actions to date in addressing her finances and demonstrating her trustworthiness reflect restored financial responsibility and judgment and resolve questions about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

Taking into account all of the documented facts and circumstances surrounding Applicant's medical and consumer debt accruals, most of which she has either paid off or is resolving through a debt consolidation plan, enough probative evidence of financial progress following difficult periods of unemployment with accompanying serious medical issues has been presented to mitigate financial concerns. Conclusions are warranted that Applicant's finances are sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Favorable conclusions are entered with respect to the allegations covered by subparagraphs 1.a through 1.z of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is consistent with the national interest.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a-1.z

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

