



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



In the matter of:)
)
) ISCR Case No. 15-06602
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq.
For Applicant: *Pro se*

12/19/2017

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has demonstrated a track record of financial rehabilitation and reform. She has resolved 8 of the 13 accounts alleged accounts. Clearance is granted.

Statement of the Case

On March 4, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to revoke her security clearance.

Applicant timely answered the SOR and requested a hearing. On September 1, 2017, I issued a prehearing order to the parties regarding the exchange and submission

¹ The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

of discovery, the filing of motions, and the disclosure of any witnesses, and the parties complied.² At the hearing, convened on September 18, 2017, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through R, without objection. DOHA received the transcript (Tr.) on September 26, 2017. After the hearing Applicant timely submitted AE S through Z, without objection.

Procedural Matters

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

Findings of Fact

Applicant, 30, has worked for a federal contractor since April 2015. She completed a security clearance application, her first, in December 2014, in anticipation of employment with another company. On the application, Applicant revealed delinquent debts to include student loans, a private loan, medical accounts, and two car repossessions. The ensuing investigation revealed additional delinquent accounts. The SOR alleges that Applicant owes \$25,000 on 13 delinquent accounts.³

Applicant's financial problems began after she graduated from college in December 2010. Between 2010 and 2015, Applicant worked a series of low-paying jobs. She also experienced periods of unemployment related to the births of her two children. Applicant also admits that her financial immaturity and bad decisions contributed to her financial problems.⁴

Applicant began to address her finances in 2015 after she was rejected from a national program dedicated to providing housing for low-income families because her debt level was too high. Following that rejection, Applicant used money from her 2015 and 2016 income tax refunds to pay her delinquent accounts. To date, she has resolved SOR ¶¶ 1.a, 1.c, 1.e, 1.g, and 1.i – 1.m. She also paid several non-SOR debts. The largest debts are for two car repossessions and another account for a high school class ring she purchased when he was 18 years old. She is not familiar with the debt alleged in SOR ¶ 1.f. Applicant has contacted the creditor holding SOR ¶ 1.b and confirmed that

² The prehearing scheduling order and the discovery letter are appended to the record as Hearing Exhibit (HE) I and II, respectively.

³ GE 1-3.

⁴ Tr. 27-38, 55, 72-74; AE A.

she owes \$8,000 for the deficiency balance on the car loan, not \$20,000 as alleged in the SOR.⁵

In 2017, Applicant reapplied for the housing program and was accepted. As part of the approval process, she is required to pay \$1,500 in closing costs and devote 300 hours to building homes – including her own. She is also required to complete the program's financial education classes, which cover money management and budgeting. By September 2017, she completed nine classes, during which she received help devising a plan for paying her delinquent accounts. According to the director of the program, "[Applicant's] demonstrated commitment to the principles in these classes is to be commended. It is obvious to the instructors of the class that she is applying the lessons learned in her everyday experiences and finances."⁶

The director of the program also observed that in addition to decreasing her debt and increasing her income:

...[Applicant] has taken ownership and responsibility for the debt she created, become more successful in managing her debt, and has increased her income and has proven to be more financially savvy.⁷

The program will continue to monitor Applicant's finances after she receives the home. In addition to the classes required by the program, Applicant has completed a class offered by a nationally known personal finance expert.⁸

Policies

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.

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.

⁵ Tr. 20-28, 41-43, 61, 64-72, 76, 83; AE B-J, U-W.

⁶ Tr. 80-81; AE M, Q, X.

⁷ AE M.

⁸ AE Z.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 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

Failure to meet one’s 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.⁹ The record is sufficient to establish the government’s *prima facie* case that Applicant has a history of not meeting financial obligations. However, she has provided sufficient information to mitigate the alleged concerns.

Applicant admits she made financial mistakes. Her financial problems were compounded by events beyond her control – the loss of income during her two pregnancies. In 2015, after being rejected from a housing program, Applicant began to rehabilitate her finances and change her financial habits. She has demonstrated a good-faith effort to repay her creditors, resolving the debts alleged in SOR ¶¶ 1.a, 1.c, 1.e, 1.g, and 1.i – 1.m. In addition, Applicant is receiving ongoing financial education

⁹ AG ¶ 18.

and counseling as required under the conditions of her acceptance in the housing program. As a result of the counseling she has received, her finances are not perfect, but are under control as she is continually learning healthy financial practices and strategies for resolving her remaining delinquent accounts.¹⁰

Based on a consideration of the record, I have no doubts about Applicant's ability to properly handle and safeguard classified information. In reaching this conclusion, I have also considered the whole-person factors detailed in AG ¶ 2(d). In the last two years, Applicant has shown increased maturity regarding her finances. She understands that maintaining a favorable financial record is not only key to maintaining her employment, but also the home she has been awarded. Given the ongoing level of scrutiny and active involvement the housing program takes in Applicant's finances, it is unlikely that she will continue to incur delinquent debt in the future.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.m: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge

¹⁰ AG ¶ 20(c) and (d).