



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08858

Appearances

For Government: Julie Mendez, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial considerations security concerns.

Statement of the Case

On April 13, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated June 3, 2016, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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 (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on June 3, 2016. She admitted four allegations of delinquent debt (SOR 1.a, 1.b, 1.c, and 1.i), denied three allegations of delinquent debt (SOR 1.d, 1.f, and 1.g), and was unable to provide a response for two debts (SOR 1.e and 1.h) because of lack of information on the debt or creditor. Department Counsel was prepared to proceed on October 6, 2016, and I was assigned the case of April 7, 2017. DOD issued a notice of hearing on July 21, 2017, for a hearing on August 11, 2017. I convened the hearing as scheduled. The Government's five exhibits (GX 1-5) were admitted into the record without objection. Applicant testified. I received the transcript of the hearing (Tr.) on August 18, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact

After a thorough review of the record, I make the following findings of fact. Applicant is 43 years old and a 1996 college graduate. She has taken some courses leading to a master's degree but is not now taking courses. She married in June 1997, divorced in March 2005, and her former husband passed away in 2010. She has one daughter from this marriage who is a college student living with and being supported by Applicant. Applicant is a program analysis for a defense contractor. She has been eligible for access to classified information since 1999. (T. 18-19, 47-48; GX 1, e-QIP, dated April 13, 2012)

Department Counsel provided a detailed outline of the Applicant's financial history. (Hearing Exhibit I). The SOR lists, and credit reports (GX 2, dated September 28, 2016; GX 3, dated May 20, 2016; GX 4, dated March 18, 2015) confirm the following delinquent debts for Applicant; a credit card past due for \$130 on a balance of \$992 (SOR 1.a); a personal loan in collection for \$7,139 (SOR 1.b); a credit card in collection for \$827 (SOR 1.c); a furniture account in collection for \$442 (SOR 1.d); a medical account in collection for \$470 (SOR 1.e); a student loan account past due for \$1,192 on a balance of \$17,476 (SOR 1.f); a furniture account in collection for \$977 (SOR 1.g); a medical account in collection for \$68 (SOR 1.h); and a credit card account charged off for \$926 (SOR 1.i). Department Counsel agreed with Applicant that SOR 1.a and 1.i are duplicate accounts. Applicant also claims SOR 1.d and 1.g are duplicate accounts. The total amount of the delinquent debt is approximately \$10,000. Most of the delinquent debt is in the personal loan at SOR 1.b. (Tr. 9-11)

¹ I considered Applicant's case under both the September 1, 2006 AGs, and the June 8, 2017 AGs. My decision would be the same under both AGs.

Applicant was a program analyst for different defense contractors. She had temporary assignments from August 2001 to August 2009. She was unemployed from August 2009 until March 2010 when she received another temporary assignment with a defense contractor which lasted until September 2010. She was unemployed from September 2010 until November 2010. She was employed from November 2010 until the contract she was working on ended in April 2011. Applicant was unemployed from August 2011 until September 2013. Applicant had a temporary position with a defense contractor from September 2013 until March 2014. In March 2014, she started working with another defense contractor. She has been steadily employed with them until present. Applicant was unemployed for a total of 19 months from August 2009. Prior to April 2014 Applicant's yearly salary had been \$63,000. Applicant's salary since August 2016 is \$65,000 annually. (Tr. 20-12, 37-41; GX 2, e-QIP, dated April 13, 2012)

Applicant attributes her delinquent debt to her periods of unemployment because of her position as a contractor. She experienced contracts ending and being laid off. She worked with a temporary employment agency to find employment. She worked part time and at temporary position but still fell behind on paying her bills. She did what she could to make payment arrangements with creditors. She worked on the debts specified in the SOR to get accurate information so she could make payments. She did not live beyond her means. She was separated from her husband and he was not paying child support as required. She never forgot the debts that she had to pay or turned to bankruptcy or other options to resolve the debts. (Tr. 15-18)

The debt at SOR 1.a (SOR 1.i is the duplicate debt) is a credit card to a clothing store where Applicant shopped for her and her daughter. She was unable to pay the full amount of her bill because of unemployment and the need to pay other debts. Department Counsel provided a payment history from the store that shows Applicant made payments on the store's bill in the amount she was able to afford. (GX 5, Payment History, dated October 6, 2014) The store accepted the payments, but would not note the payments in her account. The payment history reveals that Applicant paid at least half of the debt before she stopped making payments since she was not receiving credit for the payments. (Tr. 22-24, 41-43)

The debt at SOR 1.b is a personal loan for \$5,000 Applicant received in 2008 to assist her in paying household expenses. The amount of the loan has increased because of interest and penalties. She initially made payments on the debt but she has not made any payments recently. She stopped the payments because of her unemployment. She does not know the amount of the payments that she made. (Tr. 24-25, 43-44)

The debt at SOR 1.c is for the purchase of a motorcycle for Applicant. Applicant provided Department Counsel with documents reflecting a settlement agreement. (GX 3, credit report at 6) Applicant's credit report reflects that the debt is paid as of June 23, 2016. (Tr. 24-26, 44-45; GX 2, Credit Report, at 6)

The debts at SOR 1.d and 1.g are to a finance company and are duplicate debts for a furniture company. Applicant claims that she paid the debt to the furniture company in August 2012. The finance company telephonically informed Applicant that their records indicate that the debt was paid as of August 2012. Applicant provided a document to Department Counsel that shows she requested that the furniture store and the finance company update her credit report to reflect the account is paid. (Tr. 27-31, 44-45)

Applicant attempted to research the two medical debts at SOR 1.e and 1.h. The information in the credit reports was not specific enough for Applicant to identify the creditor for the debts. Since she cannot identify the creditors, she has not been able to pay the debts. (Tr. 30-31, 44-45)

The student loan debt at SOR 1.f has been in deferment. Since Applicant is not taking classes now, payment of the loans are not deferred as of August 2017. Applicant will start paying the \$182 student loan payments in September 2017. Applicant is current with her mortgage, taxes, and other payments. (Tr. 32-33, 46)

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 must be considered 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. 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 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations

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 a person's reliability, trustworthiness, and ability to protect classified or sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet her financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports and Applicant's admissions reveal that Applicant has delinquent consumer bills, credit cards, and personal loans. The evidence is sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability to satisfy debts, and

- (c) a history of not meeting financial obligations.

The available evidence shows an inability because of unemployment to resolve the delinquent debts which raises issues about Applicant's ability to meet her financial obligations. Once the Government has established an adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions apply. Applicant's debts are numerous, recent, and were incurred under circumstances making recurrence unlikely. The debts are normal consumer debts, loans and credit card debts. However, Applicant presented sufficient credible information to establish that she incurred the debt because she had over 19 months of unemployment in approximately a seven year period. While she did receive some unemployment compensation, it was not a similar amount to what she received in wages. Her then husband also did not pay the child support he was required to pay.

Applicant established that she acted in good-faith towards her debts. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free. All that is required is that Applicant act responsibly given her circumstances. Applicant must establish that she has a reasonable plan to resolve financial problems, and that she has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. Her plan does not require paying off all debts immediately or simultaneously. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant has established that two different debts are duplicates. I find that SOR 1.a and 1.i are duplicates. I find that SOR 1.d and 1.g are duplicates. Applicant established that she made significant payments on the debt at SOR 1.a but the creditor did not

accept the payments. She also established that she paid the debts at SOR 1.c and 1.d. She attempted to pay two medical debts (SOR 1.e and 1.h) but the available information was not sufficient to identify the creditors. Her student loan at SOR 1.f was deferred so no payments were due. Her first payment of \$182 was due in September 2017. She presented sufficient information to establish that she is current with both her mortgage payments and her taxes. Applicant presented no evidence that she received financial counseling, thus AG ¶ 20(c) does not apply to these SOR debts.

Applicant has shown sufficient action to resolve her delinquent debts. Applicant provided enough details and sufficient documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is sufficient evidence to establish why Applicant was unable to make greater progress resolving her debts. There is sufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. She has shown a good-faith effort to resolve these debts. Her reasonable and responsible actions towards her finances is a strong indication that she will protect and safeguard classified or sensitive information. Under all these circumstances, Applicant mitigated financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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(d):

(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 access to classified information must be an overall common-sense 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 considered that Applicant had extended periods of unemployment. I also considered that Applicant has been eligible for access to classified information for over 18 years and that there are no reports of any security violations.

Applicant established that she took reasonable and responsible action to resolve her financial obligations. Applicant demonstrated appropriate management of her finances and showed a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. She has established her suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial situation.

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.i: 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 access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge