



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



In the matter of:

Applicant for Security Clearance

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ISCR Case: 16-00729

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel

For Applicant: *Pro se*

10/23/2017

Decision

WHITE, David M., Administrative Judge:

Applicant's former employer significantly reduced her wages due to a business downturn, before laying her off. She turned in two vehicles that she could no longer afford for voluntary repossession, and fell behind on some consumer debts. Since gaining her current employment she has made arrangements to repay her former delinquencies and documented payments made under those agreements, mitigating security concerns. Based upon a review of the pleadings and exhibits, national security eligibility is granted.

Statement of Case

On October 1, 2015, Applicant submitted a security clearance application (SF-86).¹ On July 1, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns

¹ The SF-86 provided by Department Counsel in the File of Relevant Materials (FORM) contains only the odd-numbered pages of Applicant's 51-page clearance application. Since her FORM response contained sufficient documentation to mitigate security concerns, this due-process error is found to be harmless. It would be improper to base an adverse decision on this incomplete record, however.

under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on July 21, 2016. She admitted all of the SOR allegations concerning delinquent debts, with explanations that she had made arrangements to repay them, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 15, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on August 17, 2016, and received by her on September 1, 2016. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM.

Applicant responded to the FORM in writing, with additional evidence. Her undated FORM response was received by the Defense Office of Hearings and Appeals (DOHA) on September 12, 2016. She did not object to Items 1 through 6, which are admitted into evidence. Applicant's FORM response, to which Department Counsel had no objection, is marked Exhibit (AE) A and admitted into evidence. DOHA assigned the case to me on May 22, 2017.

The SOR and FORM in this case were issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions² issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous eligibility guidelines, as well as the new SEAD 4 AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the currently effective SEAD 4 AG.

Findings of Fact

Applicant is 46 years old, and married. She is a high school graduate, with no prior military or civil service employment. This is her first application for a security clearance. She was hired as a General Clerk II by her current employer in September 2015. (Item 3; Item 4.)

² SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

Applicant experienced a 25% cut in her hourly wage in early May 2014, due to a business downturn suffered by the company that employed her at the time. That company laid her off in September 2014, and she began six months of part-time employment by a major retail chain the following month. She was temporarily unemployed again before starting her current employment in 2015. She admitted that she had seven delinquent debts totaling \$25,553, as alleged in SOR ¶¶ 1.a through 1.g, and explained that she had become unable to make the required payments on those debts due to her reduced pay between May 2014 and September 2015. (Item 2; Item 3.)

Two of those debts (SOR ¶¶ 1.a and 1.b) were deficiency balances claimed by automobile loan creditors after she and her husband surrendered the two vehicles securing those joint loans for voluntary repossession. These debts totaled \$22,274, and were slightly over \$11,000 each as of her October 2015 credit report. She contacted representatives of the two creditors during July 2016, and made arrangements to repay these debts at the rate of \$100 per month. In her FORM response she provided documentation that she had made those payments. (Item 2; AE A.)

The remaining five formerly delinquent debts involved four revolving credit accounts and a utility bill, and totaled \$3,279 (SOR ¶¶ 1.c through 1.g). As of the close of the record, she had complied with the agreements she made to fully resolve the three debts described in SOR ¶¶ 1.c through 1.e, and had made the first of three creditor-agreed monthly payments toward fully resolving the debts described in SOR ¶¶ 1.f and 1.g. Her remaining monthly payments toward these two accounts, totaling \$700, were scheduled for automatic debit payments in September and October 2016. (Item 2; Item 5; AE A.)

Department Counsel commented in the FORM that Applicant and her family went on one-week Caribbean cruise vacations in 2012 and 2015, and implied that this indicated a lack of responsible financial decisions in the face of her unplanned loss of income due to her pay reduction and subsequent lay-off. In her FORM response, Applicant provided documentation showing that these cruises were gifts to her family from her mother-in-law, who paid all expenses for both vacations. (AE A.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire

process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant was temporarily unable repay two vehicle loans and five formerly delinquent consumer debts, which demonstrated a history of not meeting financial obligations. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial issues were largely caused by her involuntary pay reduction and lay-off, followed by a period of unemployment and part-time retail work. She has maintained her current employment for two years, and has either fully repaid or is making agreed monthly payments toward all of her formerly delinquent debts. She initiated good-faith repayment arrangements with all of her SOR-listed creditors, and has either fulfilled or is adhering to each of those agreements with no indication of new financial issues. Applicant has successfully addressed her former delinquencies, and demonstrated that her financial issues are unlikely to recur. The record establishes full mitigation of financial security concerns under the provisions of AG ¶¶ 20(a), 20(b), and 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who took reasonable and effective action to resolve the financial issues she encountered over the past several years. The likelihood that financial problems will recur is small. The potential for pressure, coercion, or duress is minimized by the resolution of Applicant's formerly outstanding debts through repayment or ongoing agreed repayment plans. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She fully met her burden to mitigate the security concerns arising under the guideline for 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

Subparagraphs 1.a through 1.g:

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 national security eligibility and a security clearance. National security eligibility is granted.

DAVID M. WHITE
Administrative Judge