



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



In the matter of:

ISCR Case No. 16-03322

Applicant for Security Clearance

Appearances

For Government: Mary Foreman, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2017

Decision

DAM, Shari, Administrative Judge:

Applicant underwent a period of financial difficulties caused by unemployment and divorce. Resulting security concerns were fully mitigated. Based upon evaluation of the testimony, pleadings and exhibits, national security eligibility for access to classified information is granted.

History of Case

On June 11, 2015, Applicant submitted a security clearance application (SF 86). On December 16, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on January 5, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and

Appeals (DOHA) assigned the case to me on April 27, 2017. DOHA issued a Notice of Hearing on May 15, 2017, setting the hearing for June 26, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) A through F into evidence. All exhibits were admitted without objection.¹ I left the record open until July 31, 2017, to permit possible submission of additional evidence. No additional exhibits were submitted. DOHA received the hearing transcript (Tr.) on July 5, 2017.

The SOR in this case was 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*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations 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 promulgated in Appendix A of SEAD 4. I considered the previous AG guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant admitted all 16 SOR allegations, which included 15 delinquent debts. Her admissions are accepted as findings of fact.

Applicant is 38 years old and divorced since 2012. She had been married for 12 years, and separated for some of them. She has two children from the marriage, ages 13 and 16. They live with her and she receives child support. She enlisted in the Army in 1998 and served until 2002, when she left service with an honorable discharge as an specialist E-4. She deployed for seven months in 1999. She received an Army commendation medal while deployed. She earned a bachelor's degree in 2010. She has been working for defense contractors since 2002 and her current employer since 2015. She has held a security since 1998. (Tr. 19-22, 27.)

In February 2009, DOHA issued a SOR to Applicant alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR alleged 13 delinquent debts that totaled \$36,000, and Applicant's failure to disclose delinquent accounts in her May 2008 SCA. After a hearing the administrative judge concluded that she mitigated the concerns raised under both guidelines. The administrative judge concluded that she sufficiently resolved or was resolving the debts and demonstrated that she did not intentionally fail to disclose delinquent debts. The Decision pointed out that her financial problems were caused by insufficient income, unemployment, separation from her spouse, and his failure to pay child support. (GE 5.)

¹Department Counsel offered Hearing Exhibit 1, as demonstrative evidence. It is a summary of the Government's Exhibits. Applicant had no objection. (Tr. 14.)

In December 2016, DoD CAF filed its second SOR. It alleged 15 delinquent debts that totaled \$20,195. Two debts were duplicates; hence, the SOR alleged 13 delinquent debts totaling \$16,987. None of the debts were alleged in the 2009 SOR. Applicant explained that these delinquent debts arose after her husband moved in with her and their children in 2010, having been separated since 2006. He irresponsibly used her credit cards and she subsequently became responsible for paying them. She also provided support for her elderly grandmother and autistic aunt from 2015 to 2016, another contributing factor to her financial problems. (Tr. 24-26, 29-30; GE 5.)

When Applicant submitted her June 2015 SF 86 for reinvestigation, she disclosed every debt subsequently alleged in the 2016 SOR, except one. (GE 1.) The status of each debt is as follows:

SOR ¶ 1.a (\$888 delinquent on an automobile loan with a total balance of \$20,872) This debt is current. Applicant stated that the balance is about \$10,000 and she thinks it will be paid in another year. She makes monthly payments on the loan. (Answer; Tr. 37; AE C.)

SOR ¶¶ 1.b, 1.c, and 1.h (\$4,439, \$4,325, and \$731, respectively, are charged off credit cards owed to the same creditor) Applicant said this is her largest debt and she intends to pay it after she completes paying other debts, including her car loan. (Answer; Tr. 26, 37-39; GE 2.)

SOR ¶¶ 1.d, 1.k, 1.m and 1.n (\$1,986, \$179, \$2,013, and \$110, respectively, are medical debts.) The debt in ¶ 1.m (\$2,013) is a duplicate of the debt in ¶ 1.d (\$1,986). She paid the \$179 debt, and disputed the \$110, which was her husband's medical debt. It was subsequently deleted from her CBR. The \$1,986 debt is owed to a dentist for her son's braces. She said her ex-husband is responsible for part of the debt; she is willing to pay the bill if he does not help. (Answer; Tr. 26, 33-36; AE C.)

SOR ¶¶ 1.e and 1.l (\$1,195 and \$1,115, respectively, are duplicate debts for a payday loan.) This debt is not resolved. (Tr. 41-42; AE C.)

SOR ¶ 1.f (\$1,198 is a cable equipment debt) Applicant disputed it because she paid the debt. It was removed from her CBR. (Tr. 40-41; AE C.)

SOR ¶ 1.g. (\$763 is a credit card debt) It was paid prior to the issuance of the SOR. (Tr. 36; AE B.)

SOR ¶ 1.i. (\$634 is a credit card debt) Applicant disputed it because she paid it. (Tr. 41-42; AE C.)

SOR ¶ 1.j. (\$534 is a credit card debt) It is unresolved. (Tr. 42-43; AE C.)

SOR ¶ 1.o. (\$105 was debt owed to a retailer) It was paid in February 2017. (Tr. 37; AE A.)

Applicant has six outstanding delinquent debts to resolve. (Tr. 43.) She accepted responsibility for those debts and recognized that her resumption of a relationship with her former husband caused her additional financial problems and jeopardized her employment. She emphasized that during and after the prior investigation in 2009, she resolved about \$30,000 of debt. She credibly asserted that she is aware of her unresolved debts that total \$12,000 and is capable of paying them. (Tr. 23-24, 48-49, 52.)

Applicant submitted a budget. Her net monthly income is \$5,586, which includes child support. Her expenses are \$4,687, leaving additional money at the end of the month for other matters. (AE D.) Her student loans were paid in full in 2015. (Tr. 39; AE C.) She has not participated in financial or credit counseling but has discussed her situation with a credit recovery service. She decided she did not to engage the service because of their high fees. (Tr. 46.)

In addition to the above delinquent debts, the SOR alleged that in October 2006 and November 2013, Applicant was charged with theft of property or service by bad check. In 2006, Applicant mistakenly wrote a check on an account that she had closed when she moved. In 2013 she wrote a check on her account that had been compromised. She disclosed these charges in her e-QIP. Both charges were dismissed. (Answer.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the 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. Directive ¶ E3.1.15 says that 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 personal 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 has a history of financial difficulties starting before 2008, as documented in her 2008 SF 86. After resolving those debts, she began accumulating additional delinquent debts in 2010. She has been unable to fully satisfy or resolve those debts.

These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes five 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, 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 individual has received or is receiving financial 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant began accruing delinquent debts after her husband moved in with her and her children in 2010, and he began to spend money irresponsibly, as he had in the past. Since their divorce in 2012, she no longer pays his living expenses or is responsible for his debts. In addition, she no longer supports her grandmother, who died in 2016. Based on those permanent changes in her personal life, there is evidence to establish some mitigation under AG ¶ 20(a), as a similar financial situation is unlikely to recur.

Applicant's financial difficulties resulted, to a limited extent, from circumstances beyond her control. She was aware of her husband's financial mismanagement, and could have prevented some of the resulting delinquencies, had she been more diligent in monitoring her finances after he moved in with her and their children. While commendably demonstrating love for her grandmother, she voluntarily assumed debts that she could not afford. There is insufficient evidence documenting that she acted responsibly under the circumstances. AG ¶ 20(b) applies minimally.

Applicant did not provide evidence that she participated in credit or financial counseling; however, she presented evidence that she has resolved some debts and is

resolving other debts, albeit as money permits. She established limited mitigation under AG ¶ 20(c). She made a good-faith effort to pay debts, including her student loans, and is making payments on a car loan. She disputed other debts on the basis that she paid them. She established some mitigation under AG ¶¶ 20(d) and 20(c).

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 and is accountable for the decisions that lead to her history of delinquent debts and the resulting security concerns raised in 2009 and 2016. A significant concern in this case is the fact that Applicant has been before this agency twice for the same underlying issues: delinquent debts some of which are attributable to her former husband. After her 2009 security clearance hearing, she resolved \$30,000 of alleged delinquent debts. In 2010, her husband returned home and subsequently began spending money irresponsibly and burdening her with additional debts. After living together two years, they divorced in 2012. Since then, she accumulated delinquent debts that she has slowly been resolving.

In most instances, this second security clearance investigation would warrant a denial of one's security clearance. However, based on Applicant's candid testimony, the resolution of some debts, and the payment of her student loans in 2015, she has demonstrated sufficient evidence of rehabilitation to warrant the renewal of her clearance. I have no doubts that she will continue to make good-faith efforts to resolve the remaining \$12,000 of delinquent debts and to establish a solid record of financial solvency. The potential for pressure, exploitation, or duress is minimal. Overall, the evidence has eliminated the formerly legitimate doubt as to Applicant's eligibility and suitability for a security clearance. She successfully 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 Section E3.1.25 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.p: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge