



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



In the matter of:

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) ISCR Case No. 17-00241
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Applicant for Security Clearance

Appearances

For Government: Tara Karoian, Esq., Department Counsel

For Applicant: Gary M. Spritz, Attorney At Law

June 11, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On November 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on December 1, 2017, and requested a hearing before an administrative judge. The case was assigned to me on January 17, 2018. DOHA issued a notice of hearing on January 23, 2018, and the hearing was convened as scheduled on February 8, 2018. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant offered six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. Applicant also testified on her own behalf. The record

remained open until close of business on February 15, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant requested additional time, and the record remained open until close business on March 15, 2018. Applicant submitted eight Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 8, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 16, 2018.

Findings of Fact

Applicant is 61 years old and married with no children. She has a Bachelor's Degree. She holds the position of Program Cost Control Analyst for a defense contractor. She seeks to obtain a security clearance in connection with her employment in the defense industry.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because she is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant failed to timely file her Federal income tax returns for tax years 2012 through 2015. She also failed to file her state income tax returns for tax years 2014 and 2015. She is indebted to the Federal Government for delinquent back taxes in the approximate amount of \$11,926 for tax years 2012 through 2015. She also filed for Chapter 13 bankruptcy in about November 2010. This bankruptcy was converted to a Chapter 7 in about March 2012, and her debts were discharged in 2012. In her Answer, Applicant admits each of the allegations. Credit reports of the Applicant dated May 20, 2015; and January 8, 2018, reflect that each of these debts were at one point owing. (Government Exhibits 5 and 6.)

Applicant has worked in the defense industry in her present capacity for the past 30-plus years. Until 2008, she had no financial problems.

In 2000, she and her husband had tried to start an Arts Education Company. With the income that she and her husband earned, and from their side investments in the stock market, they were in a very lucrative position, yet they were still incurring expenses in balancing their credit to debt. In 2008, things drastically changed. Applicant's husband lost his job. By 2011, Applicant had lost her job, and she eventually had to stop making her mortgage payments. Their joint income dropped about 75 percent. In total, Applicant estimates that as a result of this economic downturn in the stock market, the real estate market, and from their business, she and her husband lost almost two million dollars over the years. By 2011, they had also accumulated a lot of credit card debt from their business start-up and they no longer had the financial resources to pay the bills. Their house, which was purchased by her husband before they married in 2000, had two loans on it. One for the purchase of the house and the other for a home equity loan totaling \$625,000. Applicant tried numerous times to get a loan modification on the property, but was unsuccessful. She was also advised by counsel to stop making the monthly mortgage payments. At some

point, Applicant's income was all they had to manage the household expenses. To further try to save their house, Applicant was advised by counsel to file Chapter 13 bankruptcy, which she did in 2010. Upon realizing that she could not save the house, in March 2012, the bankruptcy was converted to a Chapter 7 to discharge her other credit card debt that she could not afford to pay.

Applicant admits that during this period, she did not file her Federal and state income tax returns, but was focused on trying to salvage what they could of their house and their life. Their income had substantially reduced, filing their taxes was simply not a priority at that time, and they did not have the money to pay their taxes. Applicant's house was ultimately foreclosed upon in 2015. (Tr. p. 69.) Applicant worked part time jobs until 2014, when she went back to work full time. Applicant has since filed all of the tax returns in question. (See, Applicant's Post-Hearing Exhibits 1 through 7.)

Since then, Applicant has contacted both the IRS and the state tax authorities and has been working to resolve her back taxes. In regard to her state back taxes for tax years 2014 and 2015, Applicant testified that she originally owed less than \$2,000 for both years combined. She agreed to have her wages garnished, beginning in 2015 to resolve the debt. The garnishment was completed in August 2015. (Applicant's Exhibit F, and Tr. p. 51) Applicant no longer owes the state for back taxes. In regard to her Federal back taxes, Applicant originally owed about \$11,926 for tax years 2012, 2013, 2014, and 2015. Her installment agreement indicates that she has been paying the IRS \$150 monthly toward these combined tax debt, and as evidenced from the IRS Account Transcript for tax period December 2012 through 2016 and from December 2013 through 2015; and from December 2014 through June 2017. (Government Exhibits 4 and 7) At this point, she has reduced her tax indebtedness to about \$8,000. (Applicant's Exhibit E.) She currently owes \$1,040 for Federal back taxes for tax year 2016. (Tr. p. 82.) Applicant submitted a packet of documents marked Post-Hearing Exhibit 8 and did not explained its application. It appears to show that she has resolved some of her back taxes owed to the Government.

Applicant's current financial budget indicates that she has \$32,000 in her 401K. She also keeps a balance of about \$4,000 monthly in her checking account. At the end of the month, after paying their regular monthly bills and their delinquent debts, she and her husband have about \$700 in discretionary funds. (Government Exhibit 8.)

A letter from a professional colleague of the Applicant indicates that Applicant is a responsible and reliable hard-worker, who is level-headed, demonstrates excellent customer relations, and has great team skill sets. She is extremely knowledgeable and highly ethical. She is recommended for a security clearance. (Applicant's Exhibit A.)

A letter from a coworker, from her previous place of employment, indicates that she considers Applicant to be a personal friend who is honest and trustworthy with strong values. Applicant is described as a very dedicated, hardworking employee with a positive attitude. She is recommended for a security clearance. (Applicant's Exhibit B.)

A letter from a friend and extended family member indicates that Applicant is intelligent, precise, determined and respectful. He is aware of her financial challenges in the past and her efforts to find a positive outcome by resolving her indebtedness. She is recommended for a security clearance. (Applicant's Exhibit C.).

A letter from Applicant's company business manager, who hired her, indicates that Applicant is a star. She is an excellent employee who is extremely trustworthy with the utmost integrity, and is recommended for a security clearance. (Applicant's Exhibit D.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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(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 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 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 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

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant was unable to pay her debts and taxes and became delinquently indebted. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Beginning in 2008, Applicant's financial situation began to decline. Her husband lost his job, and then in 2011, Applicant lost her job. They believe that they were victimized by the predatory lending practices, which affected many buyers in the real estate market. They lost money on their investments in the stock market and in their business. These unforeseen circumstances, or circumstances beyond her control, caused Applicant to acquire more debt than she could afford to pay. She ultimately lost her house to foreclosure and was forced to file Chapter 7 bankruptcy. Since getting back to work in 2014, her finances have been stabilizing, and she is making regular monthly payments toward her delinquent back taxes. She has completely paid off her state taxes and is currently paying her Federal taxes. She has also filed all of the state and Federal income tax returns in question. She has acted reasonably and responsibly under the circumstances. She has significantly reduced her debt and continues to work on doing so. Applicant is now on the correct financial path. Both she and her husband are now employed, which will further improve the family finances. There are clear indications that the problem is resolved and under control, and there has been a good faith effort to resolve her debts. The Financial Considerations concern has been mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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(a):

(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 a security clearance must be an overall commonsense 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	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 for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge