



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



In the matter of:

)
)
) ISCR Case No. 17-01804
)
)
)

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2018

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations security concerns arising from two large delinquent debts. National security eligibility for access to classified information is granted.

History of Case

On June 23, 2017, 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 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 within the DoD after June 8, 2017.

Applicant answered the SOR on July 24, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 24, 2017. DOHA issued a Notice of Hearing that same day, setting the hearing for September 19, 2017. Department Counsel offered

Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) 1 through 3 into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on September 27, 2017. The record remained open until October 24, 2017, to permit submission of additional evidence. Applicant timely submitted AE 4 through AE 9, and they are admitted without objection.

Findings of Fact

Applicant is 57 years old. She has been married for 27 years. She has three adult step-children. Applicant has a master's degree in computer information management. She has worked for her current employer since 2003. (Tr. 18-22) She has held top secret and secret security clearances since 1991. (Tr. 8)

Based on credit bureau reports (CBR) from August 2017, January 2017, and May 2016, the SOR contained two allegations: a past due amount of \$9,793 owed on the balance of a \$163,843 mortgage, as of May 2016; and a charged-off automobile loan debt in the amount of \$24,899, as of April 2016. (GE 3, GE 4, GE 5)

Applicant's financial problems began in December 2015 and continued accumulating until mid- 2016, during which time she was traveling for her job and incurring additional expenses not reimbursed. She also began helping her father financially. In May 2016, she had knee surgery and was unable to work for a couple months after the surgery. She received some disability payments, but not enough to cover expenses. She gave her father about \$5,000 and lost about \$5,000 of income during this period. (Tr. 28-30)

In March 2017, Applicant entered into a loan modification for her mortgage (SOR ¶ 1.a). As of April 2017, her new monthly payment is \$1,241. The loan amount is \$170,273, and includes the previously delinquent amount of \$9,793. She has been making monthly payments since April 2017. The debt is being resolved. (Tr. 26-31; GE 3; AE 2) She negotiated the loan modification prior to the issuance of the SOR.

Applicant failed to make about five payments on her car loan in 2016, during the same period she was unable to pay her mortgage (SOR ¶ 1.b). She has made five or six monthly payments of \$650 to catch up on the debt, beginning in July 2017. Her budget includes payments on this debt. (Tr. 31; GE 3; AE 7) She thinks the balance is about \$22,500. (Tr. 37) She negotiated the payment plan shortly after the SOR issued.

Applicant's annual salary is \$123,000. Her husband retired in 2004 and no longer works. He receives \$16,000 annually in social security payments. They filed their federal and state tax returns for the past five years. They owe the IRS about \$3,000 for unpaid taxes for 2016 and are on a payment plan. They established a written budget. She has not taken financial or credit counseling. (Tr. 23-24) Her most recent performance evaluation noted that she "consistently exceeded expectations, with a high measurable impact and exceptional results." (AE 6)

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 states 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 conditions that could raise security concerns. Three may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The two large SOR-alleged debts became delinquent in 2016, at which time Applicant was unable or unwilling to resolve them. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following may potentially apply:

- (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; and

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

The two debts arose during a period when Applicant was traveling for her job, financially helping her father, and recovering from surgery without sufficient income. The evidence establishes mitigation under AG ¶ 20(a), as those circumstances are unlikely to recur and do not cast doubt on her current trustworthiness and reliability. While the decision to financially assist her father was within her control, the other circumstances involving her job and health were circumstances beyond her control. Applicant did not provide information that she attempted to responsibly manage the debts while they were becoming delinquent, which is required to establish full mitigation under AG ¶ 20(b).

Applicant did not submit evidence that she participated in financial or credit counseling; however, there are indications that the two debts are under control. AG ¶ 20(c) partially applies. Applicant initiated an effort to resolve her mortgage prior to the issuance of the SOR; she started resolving her car loan shortly after the SOR issued. She is adhering to the payment plans that she negotiated with the creditors, and is demonstrating good-faith efforts to resolve her debts. AG ¶ 20(d) applies.

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 an intelligent

woman, who has successfully worked for defense contractors for a long time. Between 2015 and 2016, she encountered financial difficulties which she was initially unable to manage. She has since resolved both debts through a mortgage modification and payments on a delinquent automobile loan. Her budget accommodates those payments.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.¹

Applicant provided sufficient evidence to demonstrate a plan to implement and resolve outstanding delinquent debts. The likelihood that financial problems will recur or Applicant will stop making payments on the plans she initiated is minimal based on her efforts to-date and knowledge that similar problems could jeopardize her employment. Overall, the record evidence leaves me without doubt as to Applicant's reliability, trustworthiness, good judgment, eligibility and suitability for a security clearance. She 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 the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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