



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



In the matter of:)
)
) ISCR Case No. 17-01922
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/13/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On July 6, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on August 2, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on October 6, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 8, 2017, scheduling the hearing for December 7, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 15, 2017.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. She attended a technical college and received a license and certification. She has never married, and she has no children.¹

Except for periods of unemployment, Applicant has worked for defense contractors since at least 2005. She was unemployed from January 2009 to March 2009; June 2009 to October 2009; November 2012 to August 2013; December 2013 to February 2014; and April 2014 to May 2014.²

Applicant has had serious medical problems. She had emergency surgery in 2011 and was hospitalized for about ten days. She did not have medical insurance. She was diagnosed with cancer in 2012. She received 11 months of cancer treatment and had four surgeries in 2012 and 2013. She has had recurrent medical problems related to her cancer and its treatment. She also had additional medical problems and surgery that were unrelated to her cancer, including surgery in 2017, for which she was out of work on disability for three months. Her cancer treatment and subsequent procedures were covered by medical insurance, but she had substantial out-of-pocket expenditures, including expensive medical insurance, copayments, dietary supplements, and other medical costs that were not covered by insurance.³

The SOR alleges a \$35,640 delinquent medical debt; 13 additional mostly unidentified medical debts totaling \$11,044; a \$7,053 delinquent debt; two judgments to the same creditor for \$1,782 and \$1,147; and two miscellaneous debts totaling \$554. Except for those debts addressed below, the debts are established through Applicant's admissions and credit reports from December 2015 and April 2017.⁴

The medical debts alleged in the SOR are related to Applicant's 2011 surgery, when she was uninsured. It has been a struggle, but she has been able to pay her medical insurance and the other costs related to her cancer treatment and subsequent procedures.⁵

The creditor for the \$7,053 debt alleged in SOR ¶ 1.n forgave the loan in July 2017 and notified Applicant that it would no longer accept payments on the account. Applicant denied owing the \$288 and \$266 debts alleged in SOR ¶¶ 1.f and 1.r. Neither debt is listed on the April 2017 credit report.⁶

¹ Tr. at 63; GE 1, 2.

² Tr. at 26; Applicant's response to SOR; GE 1, 2.

³ Tr. at 27-28, 46-50; Applicant's response to SOR; GE 1, 2; AE A, D, E.

⁴ Applicant's response to SOR; GE 1-4; AE A.

⁵ Tr. at 30-33, 39-40, 51-61; Applicant's response to SOR; GE 3, 4; AE A.

⁶ Tr. at 28-29, 35; Applicant's response to SOR; GE 3, 4; AE A.

Applicant's student loans became delinquent. She rehabilitated them and has been making regular monthly payments for several years. She has been unable to address her remaining debts, but she has not accrued any new delinquent debts in more than five years. She credibly testified that she will pay her debts if she ever has the means to do so.⁷

Policies

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 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 the national security."

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 safeguard

⁷ Tr. at 32-34, 37-43, 52-53, 62-66; GE 1-4.

classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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:

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.

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

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

Applicant has a history of financial problems. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (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.

Applicant had extended periods of unemployment in 2009, 2012, 2013, and 2014. She had emergency surgery in 2011 while she was uninsured, which resulted in the medical debts alleged in the SOR. She received 11 months of cancer treatment and had four surgeries in 2012 and 2013. She has had recurrent medical problems and surgery, some of which was related to her cancer and its treatment and some not. The resultant financial problems were beyond Applicant's control.

Applicant has had medical insurance since she was diagnosed with cancer. It has been a struggle, but she has been able to pay the insurance, copayments, and other medical costs that were not covered by insurance. She rehabilitated her student loans and has been making regular monthly payments for several years, but she has been unable to address her remaining debts. She has not accrued any new delinquent debts in more than five years, and she credibly testified that she will pay her debts if she ever has the means to do so.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant acted responsibly under the circumstances. Her financial decisions do not reflect questionable reliability, trustworthiness, or judgment. AG ¶¶ 20(a) and 20(b) are applicable. It may take time, but I am convinced Applicant will eventually resolve her financial problems.⁸ The above mitigating conditions are applicable.

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(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

⁸ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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
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Subparagraphs 1.a-1.s:	For Applicant
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Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge