



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



In the matter of:)
)
) ISCR Case No. 17-02292
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

August 29, 2018

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On July 28, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on August 21, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on November 7, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 7, 2017, scheduling the hearing for November 29, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 5, which were admitted into evidence. Applicant testified on her own behalf. The record was left open until January 24, 2018, for receipt of additional documentation. DOHA received the transcript of the hearing (TR) on December 7, 2017. On January 24, 2018

Applicant offered four documents, which I marked Applicant's Exhibits (AppXs) A through D and admitted into evidence.

Findings of Fact

Applicant admitted all the allegations in the SOR, except for ¶¶ 1.a., and 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 55-year-old employee of a defense contractor. She has been employed with the defense contractor since January of 1999. (GX 1 at pages 5 and 10.) She has held a security clearance since 1999. (GX 1 at pages 28~29.) She is married, and has six adult children, four of whom are stepchildren. (GX 1 at pages 17~21, and AppX A.)

Guideline F – Financial Considerations

Applicant attributes the alleged financial difficulties to her husband's failed business in about 2012, her suffering a stroke in 2012, and her breaking her arm in 2013, which prevented her from working "for another five months." (TR at page 17 line 24 to page 20 line 20, and AppX A.) Applicant's husband handled their finances; and as such, she did not know about their delinquencies until about 2014. (*Id.*)

1.a. Applicant and her husband have filed their income tax returns for tax years 2012~2016, as evidenced from documentation from the taxing authorities. (TR at page 17 lines 3~10, at page 21 line 7 to page 28 line 11, Answer at pages 4~17, and AppX B.) This allegation is found for Applicant.

1.b. Applicant has made a good-faith effort to contact Creditor B regarding the admitted past-due debt for about \$6,972; as evidenced by her testimony, and by certified postal mail receipts from June of 2017 and January of 2018. (TR at page 28 line 13 to page 31 line 24, and AppX C at pages 1 and 4.) This allegation is also found for Applicant.

1.c. and 1.i. Department Counsel admits that these are one and the same debt to Creditor C. (TR at page 34 lines 5~18.) Applicant has made a good-faith effort to contact Creditor C regarding the admitted past-due debt for about \$1,907; as evidenced by her testimony, and by a certified postal mail receipt from January of 2018. (TR at page 32 line 2 to page 34 line 18, and AppX C at page 2.) These allegations are found for Applicant.

1.d. and 1.e. Applicant has made a good-faith effort to contact successor Creditor D regarding the admitted past-due debts totaling about \$11,826; as evidenced by her testimony, and by certified postal mail receipts from June of 2017 and January of 2018. (TR at page 34 line 20 to page 36 line 3, and AppX C at pages 3 and 4.) These allegations are found for Applicant.

1.f. Applicant is making monthly payments of \$56.45 towards the \$2,258 past-due debt to Creditor F, as evidenced by her bank records. (TR at page 36 line 4 to page 39 line 7, Answer at page 3, and AppX D.) This allegation is found for Applicant.

1.g. Applicant has made a good-faith effort to contact Creditor G regarding the admitted past-due debt for about \$1,037; as evidenced by her testimony, and by a certified postal mail receipt from June of 2017. (TR at page 39 line 10 to page 40 line 4, and AppX C at page 4.) This allegation is also found for Applicant.

1.h. Applicant has made a good-faith effort to contact Creditor H regarding the admitted past-due debt for about \$243, as evidenced by her testimony. (TR at page 39 line 10 to page 40 line 4.) This allegation is found for Applicant.

1.i. This is a duplicate of 1.c., above.

1.j. Applicant has made a good-faith effort to contact Creditor J regarding the admitted past-due debt for about \$80, as evidenced by her testimony. (TR at page 39 line 10 to page 40 line 4.) This allegation is found for Applicant.

Policies

When evaluating an applicant's national security eligibility, 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 national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information 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 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 Executive Order (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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 has significant past-due indebtedness, and failed to file income tax returns in a timely fashion. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(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;

(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.

Applicant's financial problems were caused by circumstances beyond her control: her husband's business failure, her husband keeping the fact of their delinquencies from Applicant, and by her health issues. Their income taxes have been filed, she is making monthly payments towards one of the admitted debts, and is making a good-faith effort to address the others. She has demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has been established.

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 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 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 as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a.~1.j.:	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.

Richard A. Cefola
Administrative Judge