



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



In the matter of:

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ISCR Case No. 17-04121

Applicant for Security Clearance

Appearances

For Government: Michelle Tilford, Esq., Department Counsel

For Applicant: *Pro se*

10/01/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant fell behind on her debts after underestimating the financial impact of switching to a lesser-paying job. Having adjusted to the new job's reduced pay, her finances are stable, as she has satisfied her delinquent commercial debts, and has become current on her student loan payments. I conclude she has mitigated the security concern. Clearance is granted.

Statement of the Case

On January 3, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 Security Executive Agent Directive 4, effective June 8, 2017.

On February 3, 2018, Applicant answered the SOR, denying all of the allegations and requesting a hearing, whereupon the case was assigned to me on June 13, 2018. On June 22, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for July 25, 2018. The hearing was held as scheduled. I received four Government exhibits (GE 1 – GE 4) and 20 Applicant exhibits (AE A - AE T). I also took administrative notice of the discovery letter that Department Counsel mailed to Applicant (Hearing Exhibit I). The transcript (Tr.) was received on August 2, 2018.

Findings of Fact

Applicant is a 55-year-old single woman with three adult children. Two previous marriages ended in divorce. After graduating from high school, Applicant joined the U.S. Army where she served from 1981 to 1983. In 1986, she joined the U.S. Navy and served through her retirement in 2009. She graduated from college in 2008, earning a degree in criminal justice. In 2018, she earned a master's degree in forensic science. She is currently seeking a doctorate. (Tr. 23-24) Since April 2016, Applicant has been working for a defense contractor as a contract administrator. Her duties include cost analysis. (Tr. 25)

Shortly after retiring from the military, Applicant took a job with a government contractor, working in a combat zone. The job was dangerous, but lucrative, as her salary ranged between \$150,000 and \$200,000 per year over the five years she worked there. (Tr. 56) Her salary enabled her to finance the purchase of a \$452,000 home in 2011, and to help her adult children financially. (Tr. 39) Applicant incurred extensive debt, but was managing it.

In April 2015, Applicant tired of the extremely stressful nature of her job in the combat zone, and resigned. She took another overseas job with less stress, but with a lower salary. (Tr. 32) Shortly after she took the new job, she realized that the salary was even lower than she anticipated. Specifically, because of a mutual misunderstanding of the contract terms, Applicant was only to be paid \$3,000 per month, rather than \$6,000 per month, as she anticipated. (Tr. 34) She quit the job in May 2015, and was subsequently unemployed. (Tr. 35)

Having incurred multiple debts helping her children, financing the purchase of an expensive home, and paying for her education, Applicant was now financially overextended. Consequently, five debts, totaling approximately \$13,000 became delinquent, consisting of three student loan accounts (subparagraphs 1.a – 1.c), and two commercial debts (subparagraphs 1.d – 1.e).

In June 2015, Applicant obtained another job. This one paid a salary of \$72,000 annually. Though significantly less than what she had been earning previously, it was twice as high as the job she had quit a month earlier.

Applicant's current job, which began in April 2016, pays her a salary of \$91,000 annually. Although she was still making substantially less than she did on the job in the combat zone, it was enough for her to get her delinquent debts under control. In January

2017, she began making payments towards the satisfaction of the \$2,453 debt alleged in subparagraph 1.d. By January 2018, she had satisfied it. (Answer at 1, 19-26) In January 2017, Applicant began satisfying her student loan accounts, with monthly \$100 payments. (Answer at 2) She has made these payments consistently since then, and they are no longer in delinquent status. (AE P)

Applicant's daughter incurred the phone bill, alleged in subparagraph 1.e, opening the account in Applicant's name, when Applicant was working abroad. Her daughter satisfied it. (Answer at 28)

After Applicant began having trouble getting her finances under control in 2015, she sought the help of her brother, an accountant, to provide counseling and to help her with a budget. (Tr. 56) She now has \$2,500 in monthly discretionary income, \$2,000 in a savings account. (Tr. 59), and approximately \$80,000 of equity in her home.

Applicant is highly respected on the job. Her boss gives her "the highest level of recommendation." (Tr. 65) A previous supervisor characterizes her as "very respectful of privacy, classified information, rules, and restrictions." (AE D)

Applicant's military career was stellar. She earned six commendation medals and two Navy Marine Corps Achievement Medals. (AE N) A former commander noted the following:

I have commanded thousands of our country's finest young men and women and . . . without a doubt, [Applicant] stands at the forefront of all of them. (AE E)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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.” 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

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

¹ The factors under AG ¶ 2(a) are as follows:

(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.

questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information.

Applicant's remaining financial problems trigger the application of AG ¶ 19(a), "inability to satisfy debt," and AG ¶ 19(c), "a history of not meeting financial obligations." The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving 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

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant's decision to quit her lucrative job for a lesser-paying one was reasonable, the ensuing financial problems she experienced cannot be attributed to circumstances beyond her control. Nevertheless, with help from an accountant, Applicant developed a budget to correspond to her reduced salary, satisfied both her commercial debts, and caught up on her delinquent student loan payments. AG ¶¶ 20(a), 20(c) and 20(d) apply.

Whole-Person Concept

Although the surrounding circumstances of Applicant's financial problems were not beyond her control, they still are somewhat mitigating because of their unusual nature. Quite simply, after years of serving the country through a government contractor in a dangerous combat zone, Applicant was emotionally exhausted, and was willing to sacrifice some short-term financial stability in exchange for a lower-paying job that provided her with more peace of mind. Having either satisfied her debts or brought them into current status, she has no financial problems. Her current financial stability, together with her outstanding character, as evident from her sterling character references, lead me to conclude that she has mitigated the 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 – 1.e: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge