



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



In the matter of:)
)
) ISCR Case No. 14-04084
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

05/18/2016

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 March 1, 2015, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 27, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2016, scheduling the hearing for February 3, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and called a witness, but she did not submit any documentary evidence. The record was held open for Applicant to submit additional information. She submitted documents that were marked Applicant's Exhibit (AE) A through F and admitted without objection. DOHA received the hearing transcript (Tr.) on February 10, 2016.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. She has a bachelor's degree awarded in 2010, and she attended graduate school for a period without obtaining a post-graduate degree. She married in 1998 and divorced in 2010. She has two teenage children. She cohabits with a gentleman who has a child that lives with the child's mother.¹

Applicant worked for a defense contractor from 1997 until she was laid off in 2007. She was unemployed for five months and then worked temporary and part-time jobs until she found a full-time job with another defense contractor in February 2008. She was laid off from that job in September 2011. She was unemployed for more than a year until she found a temporary job in October 2012. That position ended, but she accepted a full-time position with her current employer in November 2013, but it was in another state. Applicant went through a costly custody battle, and she and her children had medical expenses. There were also expenses related to the move, and Applicant had to pay for her children to travel to the state where she used to live to visit their father.²

The SOR alleges 15 delinquent debts. Nine of the debts are defaulted student loans, however, the debts alleged in SOR ¶¶ 1.l (\$21,411) and 1.m (\$1,783) duplicate the other accounts. The seven remaining defaulted student loans total about \$40,600. Five of the delinquent debts totaling about \$4,300 are medical debts. There is also a disputed \$4,336 delinquent debt to a financial institution on behalf of a buying club.³

Applicant started repaying her student loans in July 2014. She made at least four \$150 payments. She then attempted to consolidate her student loans with a private company. She paid the company \$216 in January 2015 and again in February 2015. She realized the company had not consolidated her student loans; the money was just going towards their fees; and she terminated the contract. She is now working directly with the U.S. Department of Education, and she submitted an application to consolidate her student loans. Once the loans are consolidated, she will resume paying her student loans.⁴

¹ Tr. at 15, 17, 28-29, 33-35; GE 1, 3; AE A.

² Tr. at 16-18, 29-62; Applicant's response to SOR; GE 1, 3; AE A, D.

³ Applicant's response to SOR; GE 2, 4; AE A.

⁴ Tr. at 18-26; Applicant's response to SOR; GE 2-4; AE A, E, F.

Applicant admitted owing the medical debts alleged in the SOR. She stated the debts were incurred for her and her children when she was unemployed and without medical insurance. She paid a medical debt and other debts that were not alleged in the SOR.⁵

Applicant disputed owing the \$4,336 debt to a financial institution on behalf of a buying club (SOR ¶ 1.n). She stated the club went out of business and continued to bill her for membership fees. Similar complaints about the company's practices are readily available through the Internet. The debt is listed by TransUnion on the May 2013 combined credit report. It does not appear on the April 2014 Equifax credit report.⁶

Applicant's partner is retired from the military and working for the same company as Applicant. He testified to her strong character, stating that Applicant is so honest that she would not "walk out of Walmart knowing that she didn't get charged for a pack of gum that got put in her bag." He is paying most of the monthly expenses, which will allow her to pay her student loans and medical debts. Applicant's oldest child has enlisted in the military, which will free some money to be used for debt repayment. Applicant's finances are finally stable. She credibly testified that she will pay her medical debts and student loans. She has not received financial counseling.⁷

Policies

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 access to classified information will be resolved in favor of national security."

⁵ Tr. at 17, 26-27; Applicant's response to SOR; GE 2-4; AE A, B.

⁶ Tr. at 32-33; Applicant's response to SOR; GE 2-4; AE A.

⁷ Tr. at 29, 32-38; AE A, C.

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 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 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. The following are potentially applicable in this case:

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

Applicant has delinquent debts that she was unable to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as 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;
- (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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant had several periods of unemployment and underemployment. She went through a divorce and a costly custody battle. She and her children had medical expenses when she was unemployed and without medical insurance. She had to pay to move to another state for her current job, and she had to pay for her children to return and visit their father.

Applicant has a legitimate basis to dispute the debt alleged in SOR ¶ 1.n, and the debt does not appear on the most recent credit report. AG ¶ 20(e) is applicable to that debt.

The remaining financial issues are student loans and medical debts. Applicant started repaying her student loans in 2014. She made at least four \$150 payments before she attempted to consolidate her student loans with a private company. The company was not what she thought it was, and her two \$216 payments were wasted on fees. She submitted an application to the U.S. Department of Education to consolidate her student loans. Once the loans are consolidated, she will resume paying them. She paid a medical debt and other debts that were not alleged in the SOR. She credibly testified that she will pay her medical debts and student loans.

Applicant's financial problems resulted from conditions beyond her control, and she has acted responsibly under the circumstances. It will take time, but I believe that

Applicant will eventually pay her debts.⁸ AG ¶ 20(b) is applicable. AG ¶¶ 20(a), 20(c), and 20(d) are partially 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(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.

Overall, the record evidence leaves me without questions or doubts as to 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

Subparagraphs 1.a-1.o: For Applicant

⁸ The Appeal Board reversed a case where the applicant's security clearance was denied, and held that the administrative judge's "decision does not explain why, under the facts of this case, if Applicant had been reasonable in addressing problems rooted in causes beyond his control, the mere fact that it might take him a long time to complete the process was a reason to deny him a clearance." ISCR Case No. 06-25584 at 3 (App. Bd. Apr. 4, 2008); See also 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."

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge