



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



In the matter of:)
)
) ISCR Case No. 14-04407
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

02/16/2016

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On February 20, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 answered the SOR on March 18, 2015, and requested a hearing. The case was assigned to me on September 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 5, 2015, setting the hearing for October 20, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection.

Applicant testified, but did not offer any exhibits at the hearing. The record was held open to allow Applicant to submit additional evidence. She submitted Applicant exhibits (AE) A through K. Those exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on October 30, 2015.

Findings of Fact

Applicant is 58 years old and has worked for a government contractor since 1983. She is a college graduate with a degree in engineering. She is a widow with two adult children, one who still lives with her. Her husband died approximately five years ago from a diabetes-related heart attack. She has held a security clearance for over 30 years without incident.¹

The Government moved to amend the SOR by withdrawing ¶ 1.b. The motion was granted. In her answer, Applicant admitted the remaining allegations. Those admissions are incorporated into my findings of fact. The SOR alleged Applicant failed to file her 2010 through 2012 federal income tax returns (SOR ¶ 1.a). The SOR also alleged that she owes \$579 and \$238 for two collection accounts, \$133 for a past-due consumer account, and \$38,968 on a past-due mortgage account (SOR ¶¶ 1.c – 1.f). These delinquent accounts were listed on credit reports from March 2014 and February 2015.²

Applicant admitted that she was overwhelmed when she failed to timely file her 2010 through 2012 federal income tax returns. Her husband unexpectedly died from a diabetes-related heart attack in November 2010. As a result of this sudden event, Appellant did not prioritize filing her federal income tax returns because in the past she always paid sufficient withholding so that she never had to pay an additional amount of tax when she filed her returns in April. After she failed to file her 2010 return, things snowballed on her and she could not find the time to file the succeeding years' returns.³ She also believed that even though she had not filed for those years, similar to her past experience, she would not have any tax liability. She has never been notified by the IRS about her tax issues. In December 2015, she hired a tax preparation service and with its help she filed her 2010 through 2014 federal income tax returns. The calculations worked out such that for tax years 2010 through 2012 she overpaid and was due a tax refund, however because there is a three year limitation on claiming a refund from the IRS, she will only get a refund for tax year 2012 in the amount of \$4,074. For tax years 2013 and 2014, she underpaid and owed a total of \$5,672. Her 2010-2012 federal income tax return filing issue is resolved.⁴

¹ Tr. at 6, 22-24; GE 1.

² Answer; GE 3-4.

³ In her testimony she indicated she had not filed her 2013 or 2014 federal tax returns. Since these years were not alleged in the SOR, I will use this information only to the extent it may have application to mitigating and whole person factors.

⁴ Tr. at 22, 28-29, 38; AE G-K.

The status of the debts is as follows:

SOR ¶ 1.c (\$579):

Applicant provided documentation that this utility account was paid in May 2015. She also received a letter from the collection company indicating the account was closed. This debt is resolved.⁵

SOR ¶ 1.d (\$38,968):

This is a delinquent mortgage account on Applicant's former residence. After her husband died, she found it too emotionally difficult to live in their home. She and her daughter moved to a rental property. She tried to sell her home, but when it was vacated it was vandalized and she could not afford to make the repairs. She also attempted to negotiate a deed in lieu of foreclosure transaction with the lender, but it refused. In November 2015, she contacted the lender seeking mortgage assistance through a lender-sponsored program. The lender sent her a letter explaining how the process works. Her request is pending at this time. This debt is being resolved.⁶

SOR ¶ 1.e (\$133):

Applicant provided documentation that this consumer account has a zero balance. This debt is resolved.⁷

SOR ¶ 1.f (\$238):

Applicant testified this telecommunications debt was paid and that she continues to receive service from this company. She is working to obtain documentation that her bill is current. This debt is being resolved.⁸

Applicant is current on her rent and other monthly obligations. She has not received financial counseling. She has been a productive, respected worker for her employer for over 30 years.⁹

⁵ Tr. at 30-31; AE E-F.

⁶ Tr. at 32-34, 39; AE C.

⁷ Tr. at 36; AE D.

⁸ Tr. at 37; AE A.

⁹ Tr. at 43, 45-48.

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 that 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." 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 about 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* Executive Order 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 as follows:

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated several delinquent debts, including a past-due mortgage account that she was unable to pay. AG ¶¶ 19(a) and (c) apply. She also failed to timely file her 2010-2012 federal income tax returns. AG ¶ 19(g) applies.

Several financial considerations mitigating conditions under AG ¶ 20 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In 2015, Applicant filed her federal tax returns for years 2010 through 2014. Although she could have addressed this issue in a more timely manner, she was somewhat paralyzed from acting because of the impact of her husband's death. She has documented her payments of two of the outstanding debts and has made significant efforts to resolve her home mortgage delinquency where her lender-sponsored mortgage assistance program request is still pending. She also is seeking documentation from the final creditor showing that she paid the telecommunication debt. Her husband's death was certainly a circumstance that will not recur and was out of her control. Although it took some time, she has acted responsibly by filing her missing federal tax returns, paying two of her delinquent accounts, and inquiring about a mortgage assistance program. Her current trustworthiness, reliability, and judgment are no longer at issue. She has resolved her tax issues and is resolving her debt issue. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's over 30 years of federal contractor service where she has held a security clearance without on issue. I also considered the devastating impact the loss of her husband had on her and her financial wellbeing. I found Applicant to be honest and candid about the circumstances that led to her tax issues. She took action to resolve her taxes and pay her debts. I find it unlikely that Applicant will find herself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant refuted and 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c – 1.f:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge