



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



In the matter of:)	
)	
)	ISCR Case No. 14-04799
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

May 22, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 46-year-old employee of a defense contractor. She is in debt to one creditor, although that debt was alleged twice on the Statement of Reasons (SOR), in the approximate amount of \$23,737. She has acted responsibly with respect to her debt by reaching a settlement with her creditor. She has the means to make her monthly payments until this debt is fully resolved. Eligibility for access to classified information is granted.

Statement of the Case

On October 31, 2014, the Department of Defense 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on November 17, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 6, 2015, scheduling the hearing for April 23, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibits (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A through D, which were admitted without objection. Applicant testified on her own behalf. The record was left open for receipt of additional documents. On May 4, 2015, Applicant presented AE E. Department Counsel had no objection to AE E and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on April 30, 2015.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. She has worked for his employer since December 2008. Applicant served in the Navy from November 1986 through July 2007, when she retired. She retired at the rank of chief petty officer. She is married and has four biological children and three stepchildren. Three of those children are minors. She also provides for a grandchild 15 days out of each month.

In 2006 Applicant's minor daughter was diagnosed with cancer. She required a year of chemo therapy. Applicant retired from the Navy, after 21 years of service, in order to care for her. Applicant did not work for a year and a half, while she cared for her daughter. However, her retirement pay did not provide enough for Applicant to live on. She began to accumulate debt that she could not afford to repay. She contacted her creditors and asked for lower interest rates, but they were not willing to negotiate with her. She decided to return to work in December 2008. (Tr. 25-27.)

In 2009, after obtaining stable employment with her present employer, she hired a debt consolidation firm to help her resolve her delinquencies that accumulated while she was unemployed and caring for her daughter. The debt consolidation firm was able to resolve all but one of her delinquencies. That unresolved debt is the subject of the SOR. (Tr. 27-33.)

As listed in the SOR, Applicant was alleged to be in debt to one creditor in the approximate amounts of \$23,727 and \$18,999, respectively. Applicant admitted allegation 1.a, and denied allegations 1.b. Applicant testified that the \$18,999 as alleged in 1.b is the original debt owed prior to its sale to a debt collection company. That same debt is duplicated, with additional interest, in allegation 1.a. The creditor sought a judgement against Applicant, which she provided into evidence, which confirmed Applicant's interpretation of these numbers. I find SOR allegations 1.a and 1.b are for the same underlying debt. (AE B; Tr. 29-33.)

After four years of attempting to resolve the debt alleged in 1.a through the debt consolidation firm, Applicant hired a law firm in approximately 2013 to address this debt for her. On April 28, 2015, Applicant and the creditor entered into a written settlement agreement that served to stay an entry of judgment and give Applicant an opportunity to

pay the debt. Applicant agreed to pay the creditor \$185 per month until a total settlement amount of \$6,290 has been paid to the creditor. (AE A; AE B; AE E; Tr. 26-39.)

Applicant testified that her household has approximately \$2,200 left after their monthly bills are resolved. She foresees no difficulties in meeting the terms of the repayment plan and intends to make her monthly payments on time. She testified she has no other delinquent debts. Her credit reports reflect all other accounts are in good standing. (GE 4; Tr. 40-41.)

Applicant's supervisor wrote a letter of support on Applicant's behalf. He believes Applicant exercises good judgment and has integrity. (AE D.) She also provided letters of support from two colleagues that praise her for her trustworthiness and outstanding leadership. (AE C.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 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 AG ¶ 2 describing 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 clearance 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 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 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, 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant was alleged to be in debt to a creditor on two delinquencies in the approximate amount of \$42,736. However, Applicant produced sufficient documentation to show that she only owed one debt, totaling \$23,737, to this creditor. The evidence raises both security concerns with respect to that debt, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 fully apply:

- (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;
and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are due to her daughter's illness and her unemployment while she cared for her daughter, both circumstances beyond her control. Applicant has acted responsibly and in good-faith, by first attempting to resolve the debt herself directly with the creditor, then by seeking the help of a professional debt consolidation company. When the debt consolidation company failed to help her settle this debt, she continued to seek its resolution and hired an attorney to help her do so. It has been a long process, but at all times, Applicant has been willing to pay this delinquency. She has finally reached a repayment agreement with the creditor and can be trusted to fully resolve it according to the terms of the settlement agreement.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is respected by her colleagues and supervisor. She performs well at work. She served honorably in the Navy for 21 years. No new delinquencies have been incurred. She has sufficient income to satisfy her monthly obligations.

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 has mitigated the Financial Considerations security concerns. I conclude the whole-person concept for Applicant.

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:	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.

Jennifer I. Goldstein
Administrative Judge