



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



In the matter of:)	
)	
)	ISCR Case No. 14-04972
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 16, 2015

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on April 27, 2012. On March 31, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 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 within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 5, 2015. She answered the SOR in writing on May 21, 2015, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on July 16, 2015. DOHA issued a notice of hearing on August 13, 2015, and I convened the hearing as scheduled on September 17, 2015. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified on her own behalf. DOHA received the

transcript of the hearing (TR) on September 25, 2015. I granted Applicant's request to keep the record open until November 16, 2015, to submit additional matters. On November 16, 2015, she submitted Exhibits (AppXs) A and B, which were received without objection. The record closed on November 17, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.c., 1.d., 1.g., 1.j., and 1.k of the SOR, with explanations. She denied the factual allegations in Subparagraphs 1.a., 1.b., 1.e., 1.f., 1.h., and 1.i. of the SOR. She also provided additional information to support her request for eligibility for a security clearance.

Guideline F - Financial Considerations

Applicant is a 57 year old employee of a defense contractor. (TR at page 18 line 14 to page 21 line 7.) She has worked for her current employer for "12 years and nine months," and has held a security clearance for that long without any violations. (*Id.*) She was laid off from by her employer in 2011~2012 for a year and a half, and has suffered bouts of pneumonia, requiring hospitalization, "the last four years." (TR at page 21 line 8 to page 23 line 1, and at page 40 lines 18~22.) This has caused her alleged financial difficulties.

In April of 2015, Applicant's debts were discharged as the result of a Chapter 7 bankruptcy, as evidenced by bankruptcy documents. (AppX A.) The Government's most recent September 2015 credit report also notes this bankruptcy, medical accounts included in the bankruptcy and no past-due debts. (GX 6.)

1.a. Applicant denies that she was subject to a judgment to Creditor A in the amount of \$9,180. (TR at page 23 line 22 to page 24 line 25, at page 27 lines 2~4, and at page 41 lines 6~16.) In an abundance of caution, she included this judgment in her bankruptcy, and it does not appear on the Government's most recent September 2015 credit report. (AppX A, and GX 6.) This allegation is found for Applicant.

1.b. Applicant denies that she was indebted to Creditor B for a past-due debt in the amount of \$2,973. (TR at page 25 line 1 to page 26 line 1, and at page 27 lines 2~4.) In an abundance of caution, she included this debt in her bankruptcy, and it does not appear on the Government's most recent September 2015 credit report. (AppX A at page 3, and GX 6.) This allegation is found for Applicant.

1.c., 1.d., 1.g., 1.j., and 1.k. Applicant admits that she was indebted to Creditor C for past-due medical debts in an amount totaling about \$34,085. (TR at page 26 line 2 to page 27 line 1, and at page 27 line 5 to page 28 line 11.) She included these debts in

her bankruptcy, as evidenced by the Government's most recent September 2015 credit report. (AppX A , and GX 6.) These allegations are found for Applicant.

1.e. Applicant denies that she was indebted to Creditor E for a past-due debt in the amount of \$544. (TR at page 28 line 12 to page 30 line 10.) In an abundance of caution, she included this debt in her bankruptcy, and it does not appear on the Government's most recent September 2015 credit report. (AppX A, and GX 6.) This allegation is found for Applicant.

1.f. Applicant denies that she was indebted to Creditor F for a past-due debt in the amount of \$181. (TR at page 30 line 11 to page 31 line 9.) In an abundance of caution, she included this debt in her bankruptcy, and it does not appear on the Government's most recent September 2015 credit report. (AppX A, and GX 6.) This allegation is found for Applicant.

Allegation 1.g. has already been discussed, above.

1.h. Applicant denies that she was indebted to Creditor H for a past-due debt in the amount of \$105. (TR at page 31 line 11 to page 32 line 5.) In an abundance of caution, she included this debt in her bankruptcy, and it does not appear on the Government's most recent September 2015 credit report. (AppX A, and GX 6.) This allegation is found for Applicant.

1.i. Applicant denies that she was indebted to Creditor I for a past-due debt in the amount of \$103. (TR at page 32 lines 6~14.) In an abundance of caution, she included this debt in her bankruptcy, and it does not appear on the Government's most recent September 2015 credit report. (AppX A, and GX 6.) This allegation is found for Applicant.

Allegations 1.j. and 1.k. have already been discussed, above.

Policies

When evaluating an applicant's suitability for a security clearance, 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 useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to obtaining 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 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 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).

Analysis

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in Paragraph 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 Subparagraph 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly under Subparagraph 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant has had difficulty meeting her financial obligations. However, I find two countervailing Mitigating Conditions that are applicable here. Under Subparagraph 20(b), it may be mitigating where *“the conditions that resulted in the financial problem were largely beyond the person’s control (e.g. Loss of employment, . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances.”* Applicant’s past-due indebtedness is directly attributed to her 2011~2012 unemployment and her bouts with pneumonia. Under Subparagraph 20(d), it may also be mitigating where *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”* Applicant has resolved the alleged past-due debts through a Chapter 7 bankruptcy.

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of Applicant’s conduct and all the circumstances. Under Paragraph 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.

The administrative judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Applicant is well respected in the workplace. (AppX B at pages 5 and 7.) The record evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from her Financial Considerations, under the whole-person concept.

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
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	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.

Richard A. Cefola
Administrative Judge