



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



In the matter of:)	
)	
)	ISCR Case No. 14-05172
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On November 20, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and H (drug involvement). 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 December 5, 2014, and requested a hearing before an administrative judge. The case was assigned to me on March 10, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 13, 2015, scheduling the hearing for April 2, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 3 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through K, which were admitted without objection.¹ The record was held open for Applicant to submit additional information. She submitted documents that were marked AE L through N and admitted without objection. DOHA received the hearing transcript (Tr.) on April 9, 2015.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. She has worked for her current employer since January 2014. She is applying for a security clearance for the first time. She attended a technical school for computer applications and networks. She also has a few college credits. She has never married, and she has no children.²

Applicant was an occasional marijuana user from high school through September 2013. She also bought small amounts of marijuana. She used cocaine on a few occasions in 2011. When she accepted her current job in January 2014, she moved more than 2,000 miles. She is aware that she could lose her job and her security clearance if she uses illegal drugs again. She credibly testified that she will not do so.³

Applicant worked for a company from 2004 through January 2010. The company was purchased by another company, and Applicant was one of many employees who were laid off. She was unemployed from January 2010 through September 2010. She took out a loan from her 401(k) retirement account in 2008. When she was unemployed, she was unable to maintain the loan payments, and the loan converted to an early withdrawal, which carries income tax consequences. She was unable to pay all the taxes for tax years 2010 and 2011. She owed \$4,756 plus penalties and interest for 2010 (SOR ¶ 1.j - \$8,481) and \$628 plus penalties and interest for 2011 (SOR ¶ 1.k - \$702).⁴

In about 2012, Applicant entered into a \$164 per month payment agreement with the Internal Revenue Service (IRS) to address her 2010 and 2011 taxes. She has made her monthly payments, and she has reduced the balance owed for both years to a total of \$7,746.⁵

Applicant found another job in September 2010. She worked for that employer until she accepted her current position in January 2014. In 2011, Applicant took a friend into her house to live. She did not know that he was a heroin addict. Once she realized he was an addict, she attempted to get him help. She used credit cards to pay for his treatment, which was unsuccessful. He took advantage of her generosity and stole from

¹ AE A through K were originals. They were returned to Applicant during the hearing with the requirement that she return copies of the documents after the hearing, which she did.

² Tr. at 42, 45-46; GE 1, 2.

³ Tr. at 41-44; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 17-21, 36-39; Applicant's response to SOR; GE 1, 2; AE C.

⁵ Tr. at 17-20, 36-38; AE C.

her. Between paying to try and get him clean and what he stole from her, she was unable to pay all her bills and her debts became delinquent.⁶

The SOR alleges ten delinquent debts with balances totaling about \$47,200 and that Applicant stopped paying her mortgage loan in January 2014. Applicant admitted all the allegations, but she indicated that she is in the process of paying her debts.

Applicant fell behind on the mortgage loan and the home equity line of credit on her condominium in January 2014 (SOR ¶¶ 1.a and 1.i). The March 2014 credit report lists the mortgage loan as \$2,053 past due with a \$100,620 balance. The home equity line of credit was reported as \$139 past due with a \$41,605 balance. Applicant short sold the condominium in September 2014 for about \$102,000. The owner of the mortgage loan issued an IRS Form 1099-C (Cancellation of Debt) in September 2014, which cancelled the \$12,437 deficiency. The owner of the home equity line of credit also issued an IRS Form 1099-C in September 2014, which cancelled \$36,992. Applicant is aware of the potential tax consequences of these actions.⁷

Applicant contracted with a debt-management company in December 2013 to assist in resolving her debts. She enrolled eight accounts, including seven debts from the SOR, in the company's debt-resolution plan: SOR ¶¶ 1.b (\$4,544), 1.c (\$3,046), 1.d (\$3,228), 1.e (\$753), 1.f (\$12,958), and 1.g (\$3,434). She pays the company \$549 every month. The company keeps \$20 as a maintenance fee and then disburses the remainder to her creditors. Applicant established that she paid the company \$849 in April and May 2014, \$682 in June 2014, and \$549 every month from July 2014 through February 2015. The \$753 debt alleged in SOR ¶ 1.e has been paid.⁸

Applicant has been paying the \$8,017 debt alleged in SOR ¶ 1.h outside her debt-resolution plan. She has a \$250 per month payment plan with the law firm collecting the debt. The March 2015 credit report shows the balance as reduced to \$5,645.⁹

Applicant disclosed her drug use, delinquent debts, and unpaid taxes on her Questionnaire for National Security Positions (SF 86), which she submitted in March 2014. She discussed both matters during her background interview in March 2014. She received financial counseling from the debt-management company. She stated that with her current employment, her finances are back on track. She credibly testified that she will continue with her payment plans until all her delinquent debts are paid.¹⁰

⁶ Tr. at 20-21, 39-41; GE 1, 2.

⁷ Tr. at 25-26, 36; Applicant's response to SOR; GE 2, 3; AE A, B, K. See <http://www.irs.gov/Individuals/The-Mortgage-Forgiveness-Debt-Relief-Act-and-Debt-Cancellation->.

⁸ Tr. at 21, 29-36; Applicant's response to SOR; AE D, E, J, O.

⁹ Tr. at 21-23; Applicant's response to SOR; GE 3; AE I, L, M.

¹⁰ Tr. at 45-46; GE 1, 2.

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."

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:

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

Applicant was unable to pay her financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems were caused by her unemployment in 2010 and her helping a friend who turned out to be a heroin addict. The unemployment was beyond her control, but she was not obligated to help the friend. She has been paying

the IRS since about 2012, and she has been paying her debts through the debt-management company since April 2014. She has a payment plan for another debt, and her home loans have been resolved through a short sale. She credibly testified that she will continue with her payment plans until the debts are paid.

I find that Applicant has established a plan to resolve her financial problems, and she has taken significant action to implement that plan. She acted responsibly and made a good-faith effort to pay her debts. There are clear indications that her financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c) and 20(d) are applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(a) is not yet completely applicable because Applicant is still in the process of paying her debts.

Guideline H, Drug Involvement

The security concern for drug involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying conditions potentially applicable in this case include:

- (a) any drug abuse;¹¹ and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant possessed and used marijuana and cocaine. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) a demonstrated intent not to abuse any drugs in the future, such as:

¹¹ Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;
- (3) an appropriate period of abstinence; and
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant was an occasional marijuana user from high school through September 2013. She experimented with cocaine on a few occasions in 2011. She has not used any illegal drugs since September 2013. In January 2014, she got a new start with a good job more than 2,000 miles from where she used to live. She is aware that she could lose her job and her security clearance if she uses illegal drugs again. She clearly, unequivocally, and credibly committed to remaining drug-free. I find that she has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are 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 Guidelines F and H in my whole-person analysis.

Applicant was a credible witness. I am satisfied that her illegal drug use is in the past, and that she is committed to paying all her debts.

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 and drug involvement 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.k:	For Applicant
Paragraph 2, Guideline H:	For Applicant
Subparagraphs 2.a-2.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.

Edward W. Loughran
Administrative Judge