



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



In the matter of:)
)
) ISCR Case No. 15-02682
)
Applicant for Security Clearance)

Appearances

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

01/08/2016

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 October 25, 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 November 9, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on December 7, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on December 16, 2015. She responded with a letter and an e-mail that I have marked Applicant's Exhibits (Ex) A and B. The case was assigned to me on January 5, 2016. The Government exhibits included in the FORM and AE A and B are admitted in evidence without objection.

Findings of Fact

Applicant is 46 years old. It is not clear whether she is a current employee or a prospective employee of a defense contractor. She attended a business trade school in 2010, but she did not earn a degree. She married in 1987 and divorced in 1994. She has two adult children.¹

Applicant's father owned a restaurant that was placed under Applicant's name even though she did not have anything to do with the operation of the business. Her father leased the restaurant to a third party, who did not pay the utility bills for more than a year. In December 2010, the utility company obtained a \$7,017 judgment, plus attorney's fees, interest, and costs, against Applicant, as the named owner of the restaurant. Applicant settled the judgment in June 2013. Applicant incurred additional delinquent debts, which she attributed to being a single mother and working overseas.²

The SOR alleges the \$7,017 judgment and ten additional delinquent debts totaling \$13,110. Two of the debts (SOR ¶¶ 1.j - \$764 balance and 1.k – no balance alleged) are duplicate accounts. Medical debts ranging from \$51 to \$394 and totaling about \$741 comprise five of the SOR allegations. The remaining debts consist of a student loan (\$3,432), a charged-off motorcycle loan (\$7,486), and a collection account (\$667).³

SOR ¶ 1.h alleges a \$3,452 past-due student loan. Applicant paid the loan in full with a \$2,600 payment in July 2015. She also paid in full two other student loans totaling \$6,320 that were not delinquent.⁴

The collection company handling two of the collection accounts (\$764 and \$667) notified Applicant that the company "has closed and will not be collecting on the [accounts]." The company further stated that Applicant had "no further obligation regarding th[ese] account[s]."⁵

Applicant attempted to pay her medical debts. She paid the \$51 debt in February 2015. She settled the \$394 medical account for \$137, which she paid in September 2015. The remaining three medical debts do not appear on the two most recent credit

¹ Items 2, 3.

² Items 1-5.

³ Items 1-5.

⁴ Items 1-5.

⁵ Items 1-5.

reports. Applicant contacted the collection company that was handling the debts. She was informed that the company had no records of the account numbers alleged in the SOR.⁶

Applicant owned a motorcycle in about July 2008. It was repossessed in about June 2009. She thought the repossession resolved her loan, but the credit reports show the loan as charged off with a \$7,486 balance. This debt has not been paid.⁷

Applicant worked in Iraq for a defense contractor from 2011 to 2013. Her current employment status is unclear, but she indicated that she was hoping to receive a favorable adjudication of her security clearance so that she could “return to work overseas with [her] most recent employer.” She stated that she was continuing to work diligently to improve her finances.⁸

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.

⁶ Items 1-5.

⁷ Items 1-5.

⁸ Items 1, 2.

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 had delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise the above 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;

(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 paid, settled, or otherwise resolved all but one of the debts alleged in the SOR. She also paid in full two student loans that were not delinquent and not alleged in the SOR. She stated that she was continuing to work diligently to improve her finances.

I find that Applicant established a plan to resolve her financial problems, and she took 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(a) is not yet completely applicable because Applicant is still in the process of paying her debts.

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 this 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.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.

Edward W. Loughran
Administrative Judge