



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04283
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esquire
For Applicant: Jacob T. Ranish, Esquire

05/18/2016

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On November 5, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹

In an undated SOR Response, Applicant admitted four of seven allegations under Guideline F and denied the sole allegation raised under Guideline E. She also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on October 28, 2015. DOHA issued a notice of hearing on November 2, 2015, setting the hearing for December 3, 2015. The hearing was convened as scheduled.

The Government offered 10 documents, which were accepted without objection as exhibits (Exs.) 1-10. Applicant offered testimony and 15 documents, which, after

¹ 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 DOD on September 1, 2006.

review, were accepted as Exs. A-O. The transcript (Tr.) was received on December 11, 2015. On January 11, 2016, the Government forwarded three packets of information that were received from Applicant to supplement the record. They were accepted as Ex. P-R without objection. The record was then closed.

Findings of Fact

Applicant is a 64-year-old operational architect who has worked for the same defense contractor since 2013. She was born into a military family, which inspired her to work for the government. Early on, she spent many years struggling as a single mother. Later, while working full time, she earned a bachelor's degree, then a master's degree in systems engineering. She is now married and her child is grown. Applicant received financial counseling in 2013. (Ex. H) She had two abrupt periods of unemployment, in 2012 (July through November) and 2013 (July through October), due to contractual problems at work. (Tr. 17, 36-39, 52-54) She has otherwise been continuously employed since 2004. Applicant hopes to wind down her career and retire within the next three years. (Tr. 55) She has held a security clearance for many years without incident. (Tr. 34)

Through 2001, Applicant was living within her means on a salary of approximately \$125,000. In 2008, she experienced the effect of a national real estate downturn. She went "underwater" with her house, the value of which decreased markedly. (Tr. 85-86) Over time, and periods of unemployment in 2012 and in 2013, additional debts were acquired and became delinquent. In addition, a potential buyer for her house breached their contract in early April 2014, protracting the disposal of the property and satisfaction of related debt. (Tr. 87-88) This led her to file for bankruptcy 2014. At issue in the SOR are the following financial issues or delinquent debts:

1.a May 2014 Chapter 13 bankruptcy petition – Applicant completed her payments on the bankruptcy in October 2015, and her debt was discharged on January 8, 2016. (Ex. P-R) This was completed two years earlier than originally contemplated due to her return to work and diligent allocation of incoming funds. (Tr. 47-49)

1.b Mortgage account past due in the approximate amount of \$54,997 with a loan balance of \$415,387. The home was originally purchased for about \$220,000, but multiple refinances were sought for upgrades and repairs, such as a new driveway, HVAC system, new garage, updated electrical wiring, etc. (Tr. 58-59) Other sums were spent toward outstanding bills, including a used car loan. (Tr. 59) Due to a 2014 short sale, which was completed after a contract breach and then a protracted period of time to gaining approval for a short sale, this account is now at zero. (Ex. D)

1.c Charged-off home equity loan with an approximate balance of \$51,168. This account was settled in full. (Exs. E, F; Tr. 24)

1.d Charged-off account (ending -3605) for about \$5,592. This debt was satisfied via bankruptcy payments and ultimate bankruptcy discharge. (Exs. A, R; Tr. 24-26, 56)

1.e Collection account in the approximate amount of \$3,718 for a failed business venture Applicant tried during a period of unemployment. Debt was satisfied through bankruptcy payments and ultimate discharge. (Exs. A, R; Tr. 24-26, 56)

1.f Medical collection account for \$39. Debt was satisfied through bankruptcy payments and ultimate discharge. (Exs. A, R; Tr. 24-26, 56)

1.g Medical collection account for \$440. Debt was satisfied through bankruptcy payments and ultimate discharge. (Exs. A, R; Tr. 24-26, 56-57)

In completing her April 2013 security clearance application (SCA), nearly a year before she filed for Chapter 13 bankruptcy protection, Applicant wrote “no” in response to “Section 26 – Financial Record. . . Delinquency Involving Routine Accounts (other than previously listed, have any of the following happened? . . . You are currently over 120 days delinquent on any debt? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor).” At the time, some of the above delinquent accounts were existent. However, Applicant was only given one weekend to complete her SCA and was unaware of the debts or the contents of her credit report. She saw no reason to think she needed to check whether there had been any changes from her previous SCA. She made no attempt to mislead investigators. (Tr. 50-51) She only knew she was behind on her mortgage, which, since she was under a good-faith forbearance plan, she assumed was not at issue in the Section 26 inquiry. (Tr. 82) Otherwise, she did not believe she was delinquent by 120 or more days on the other accounts. (Tr. 51) She attributes her inaccuracy to “a mistake,” conceding she was not fully focused at the time she completed the form. (Tr. 52, 81, 84) Later, before her investigative interview convened, she notified the investigator that she had made mistakes on her SCA in her haste to complete the form. (Tr. 53)

Today Applicant earns \$98,000 a year. With that salary she was able to finish her bankruptcy payments. She is now able to live fully within her means without difficulty. (Tr. 54) Never having had significant economic issues earlier in her life, she attributes her recent problems to having had two layoffs within a year and to the breach of contract that protracted her disposal of her property. (Tr. 54, 87-88)

Applicant does not dispute any of the balances at issue. She is current on her taxes. Although they maintain separate accounts, her household income is supplemented by her husband, who earns about \$50,000 a year. The only family vehicle in her name is a 2001 truck; a motorcycle in her name was purchased on behalf of her husband and is to be retitled to him in the near future. As a family, their vehicles are either paid for or currently in timely repayment. (Tr. 90) Applicant’s recent marriage was simple and the couple did not take a honeymoon. They live simply. She no longer lives paycheck to paycheck. She will not jeopardize her job by straining her finances. She is now saving money for the first time in her life. (Tr. 88)

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 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant filed for Chapter 13 bankruptcy and acquired multiple delinquent debts. This is sufficient to invoke two financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Prior to 2008, Applicant balanced her life as a single mother and working student on a manageable salary and lived within her means. In 2008, when an unforeseeable decline in the market occurred, the value of her mortgaged home went "underwater." As she managed to satisfy payments related to her real estate, interruptions in her employment contracts caused her to be unexpectedly unemployed for a combined period of almost 10 months between 2012 and 2013. Then, in 2014, a potential buyer's breach of contract to purchase her home protracted her ability to dispose of the house, satisfy related debt, and address other obligations. As a result, she filed for Chapter 13

bankruptcy in 2014. She completed her payments on her bankruptcy schedule expeditiously. As a result, her debts were discharged early, in January 2016.

Today, Applicant earns about \$100,000 a year. She enjoys a stable work environment, is current on her taxes and accounts, and lives within her means. Her household income is supplemented by that of her husband, who earns about \$50,000 a year. She is intent on continuing to live simply and responsibly maintaining her security clearance. She and her husband work together in allocating financial responsibilities. Applicant, for the first time, is saving money for her future. Now debt-free and living within her means, I find AG ¶ 20(b), (d), and (e) apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, where the significance of conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations is defined (“[p]ersonal conduct can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information”). Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

In completing her April 2013 SCA about a year before she filed for Chapter 13 bankruptcy protection, Applicant wrote “no” in response to “Section 26. In essence, this denied she was currently over 120 days delinquent on any routine accounts. In her haste to complete the SCA under a deadline, she did not check her credit reports. She knew she was late on her mortgage, but believed that being in a forbearance program excluded its inclusion as an answer to the question posed. Otherwise, she earnestly believed her other accounts, even if past due, were not past 120 days delinquent. When she first met with investigators, she raised the issue that she had some debt. I find Applicant highly credible on this issue and find there is no direct evidence she intentionally falsified her answer. Without an intent to falsify, none of the personal conduct disqualifying conditions 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). 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 incorporated my comments under

the two guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature and credible 64-year-old operational architect from a military family whose goal has been to work in government service in some capacity. She earned her degrees while balancing her life as a single mother and full-time employee. She lived within her means until 2008, when a downturn in the economy adversely affected the value of her house. Then, nearly 10 months of unemployment between 2012 and 2013 led to delinquent bills, followed by an unexpected breach of contract by a buyer for her home in 2014. Since then, she has settled her largest debt. She has also seen the approximately \$9,700 in charge-off or collection accounts at issue successfully, and, through her diligence, prematurely discharged.

Although the plan she implemented to address her debts included bankruptcy, which is not the preferred manner for addressing one's obligations, it is legally permissible. Also, to her credit, she filed under Chapter 13, made timely payments, and worked to satisfy her share of the balance ahead of schedule. As for her SCA, I find Applicant did not intend to falsify her answers. In sum, I find that Applicant mitigated financial considerations and personal conduct 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.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge