



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



In the matter of:)	
)	
)	ISCR Case No. 17-01731
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro Se*

02/01/2019

Decision

Curry, Marc E., Administrative Judge:

Applicant’s financial problems were caused by circumstances beyond her control, and she has been acting responsibly to resolve them. I conclude she has mitigated the security concern. Clearance is granted.

Statement of the Case

On June 21, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive) and the National Security Adjudicative Guidelines (AG), effective June 8, 2018.

On July 13, 2017, Applicant answered the SOR, admitting subparagraphs 1.a through 1.d, and denying the remainder. She requested a hearing, whereupon the case

was assigned to me on July 20, 2018. On September 13, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for October 10, 2018. The hearing was held as scheduled. I received five Government exhibits (GE 1 – GE 5) and twelve Applicant exhibits (AE A - AE L). I marked another exhibit as AE M for identification purposes, but did not incorporate it into the record. I also incorporated a copy of the discovery letter that Department Counsel mailed to Applicant (Hearing Exhibit I). At the close of the hearing, I left the record open to November 10, 2018 for Applicant to submit additional documents. Within the time allotted, she submitted three additional exhibits that I received as AE N through AE P. On January 9, 2019, Applicant moved for the admission of two additional exhibits (AE Q and AE R). Department Counsel did not object to their admission, therefore I re-opened the record and admitted the documents. The transcript (Tr.) was received on October 19, 2018.

Findings of Fact

Applicant is a 35-year-old single woman with four children. The oldest child is a teenager, the middle children are five-year-old twins, and the youngest is three months old. Applicant earned an associate's degree in health science in 2016. (Tr. 19) From August 2015 to December 2017 she worked as a medical administrative assistant. Her duties included helping service members transfer from active duty to civilian life. (GE 1 at 12) She left the job after her clearance was denied (Tr. 74), and was unemployed until September 2018, when she gained a part-time job as a paralegal. (Tr. 14) According to Applicant's supervisor when she worked as a medical administrative assistant, she was an impressive employee who provided great care to the service members. (AE O)

The SOR alleges approximately \$35,000 of delinquent debt. The debts alleged in subparagraphs 1.a through 1.c are delinquent car loans. Subparagraph 1.a, totaling \$14,233, is a loan used to finance the purchase of a car in 2011. (GE 5 at 9) She kept up with payments for eight months until she stopped receiving child-support payments from her oldest child's father in December 2011. (GE 3 at 1) The car was repossessed in 2012. (Tr. 68)

In September 2012, Applicant purchased another car, financing it with a loan secured by the creditor alleged in subparagraph 1.c. (Tr. 35; GE 3 at 2) Three months later, she discovered that she was pregnant with her twins. By May 2013, recurring difficulties related to the pregnancy required her to go on bedrest. (Tr. 36) Unable to work, she fell behind on her car note. (GE 5 at 9; Tr. 33)

With the help of her mother, who cosigned the loan, Applicant purchased an automobile in 2015. When she applied for the loan, the loan officer told her the delinquency on the loan, alleged in subparagraph 1.c, was too high to roll into the new car loan. Consequently, he advised her to allow the car secured by the loan alleged in subparagraph 1.c to be repossessed. (Tr. 32) Kicking the deficiency down the road would enable her to secure a loan for the purchase of the new car. Applicant then lost her job. Subsequently, she defaulted on the loan, and the car was repossessed, as alleged in subparagraph 1.b. (GE 3 at 2; Tr. 32)

In sum, all three cars that Applicant purchased between 2011 and 2015 were repossessed. In November 2017, Applicant wrote each creditor a letter with a proposed payment plan. (AE G – H) Under each respective plan, she proposed to satisfy the delinquencies with \$100 monthly payments. (AE G – H) Shortly after writing the automobile creditors, Applicant lost her job, and just regained part-time employment one month before the hearing in September 2018. (Tr. 42, 74) She has been unable to execute any of the proposed payment plans.

The debt alleged in subparagraph 1.d is a loan for which Applicant applied during the period when she was not working and on bedrest in 2013. (Tr. 42) When Applicant lost her job, the account became delinquent in the approximate amount of \$1,106. (Tr. 42-43) Applicant contacted the creditor and agreed to a payment plan. Per the agreement, she was to pay \$140 per month. (Tr. 42) In December 2017, she lost her job, rendering her unable to make the payments. (Tr. 42)

Subparagraph 1.e is a delinquent utility bill in the amount of \$228. This delinquency coincided with the period of time when she was not working and on bedrest. (Tr. 21) In November 2017, Applicant contacted the creditor to arrange payment. (Tr. 44) Per the agreement, the creditor was supposed to automatically debit her account. They never did, and Applicant never called them again. (Tr. 45)

The creditor alleged in subparagraph 1.f is an insurance company that insured one of the repossessed cars. (Tr. 45) The alleged delinquency is \$136. Applicant disputed this debt, contending that, per the auto insurance agreement, she always paid the insurance payment in advance of the month she received the insurance coverage. (Tr. 45) She successfully disputed the debt and it was removed from her credit report. (45-46)

Subparagraph 1.g is a delinquent repair bill owed to a rental-car company for damages incurred in 2010 when Applicant was in a car accident with a rental car. (Tr. 47) The delinquency totals \$2,311. She disputes the bill, contending that she opted for car insurance, but the rental company did not include it in the contract. (Tr. 47) She provided no evidence in support of her dispute.

Subparagraph 1.h, is a credit-card debt totaling \$483. It has been delinquent since April 2010. (GE 2 at 5) Applicant satisfied it through \$50 monthly payments from September 2015 to June 2016. (GE E at 7) She has reported payment of this debt to the credit reporting agency and is seeking to have it removed from her credit report. (GE E at 7)

The debt alleged in subparagraph 1.i stems from eviction-related costs from an apartment where Applicant lived from June 2012 to May 2013. (Tr. 51) The alleged delinquency totals \$3,819. Applicant denies this account, but provided no evidence in support of her contention that she does not owe it.

Subparagraph 1.j is an alleged delinquent hospital bill totaling \$3,132. Applicant disputed this bill, contending that she received the treatment, but her medical insurance covered it. (Tr. 54) She contacted her insurance company, who resubmitted the insurance information at her request. (Tr. 54) She then contacted the credit agency and had this bill removed from her record. (AE F)

The debt alleged in subparagraph 1.k is a disputed medical bill totaling \$319. Applicant contacted the credit-reporting agency and had the debt deleted from her record. (AE F)

The debt alleged in subparagraph 1.l is a disputed parking ticket totaling \$240. Applicant contacted the credit agency and had it removed from her credit report. (AE F)

Since Applicant answered the SOR and began reaching out to creditors, her financial situation has worsened. Specifically, after she discovered she was pregnant with her fourth child, her boyfriend demanded that she terminate the pregnancy. (Tr. 74) When she refused, he kicked her out of his home. (Tr. 74-75) Although the three oldest children stayed with him, Applicant was left without a steady home address during the period that coincided with her unemployment. While unemployed, she was unable to follow through on the delinquent car note payment plans, and incurred approximately \$1,700 of additional delinquent debts. (Tr. 70)

Applicant gained a part-time job in September 2018. It pays \$1,770 per month. (Tr. 14) She remains without a fixed home address. Realizing that she would not be able to satisfy her delinquencies under these circumstances, she filed for Chapter 7 bankruptcy protection in October 2018. By January 8, 2019, the bankruptcy court had administered her estate and closed the proceeding. (AE Q) The record does not contain the schedule of the discharged debts.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 national security eligibility will be resolved in favor of the 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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).

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

¹ The factors under AG ¶ 2(a) are as follows:

(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.

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 or sensitive information.

Applicant's history of financial problems and their ongoing nature trigger the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to 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.

Employment instability and erratic child-support payments have significantly contributed to Applicant's financial problems. In addition, on one occasion, she followed the advice of an unscrupulous car dealer who proposed that she strategically default on a previous auto loan to obtain a new car.

Applicant has satisfied one of her delinquencies in its entirety (subparagraph 1.h). She has successfully disputed the debts alleged in subparagraphs 1.f, and 1.k through 1.l. After experiencing her most recent job loss, which coincided with an unexpected pregnancy and homelessness, Applicant realized that she would be unable to satisfy the delinquent debts, and decided, instead to file for Chapter 7 bankruptcy protection. It is unclear from the record whether all of the debts were discharged in the bankruptcy. Moreover, AG ¶ 20(e) is only partially applicable because Applicant did not provide concrete evidence of actions to resolve the debts alleged in subparagraph 1.g and 1.i. Nevertheless, the circumstances beyond Applicant's control, the initial steps taken to resolve them before her

most recent unexpected personal setback, and the effort to obtain Chapter 7 bankruptcy protection are sufficient to trigger the application of AG ¶¶ 20(b) and 20(d).

Whole-Person Concept

Applicant did not incur her delinquent debts as the result of foolish or irresponsible overspending. Instead, they resulted from a number of personal crises. Currently, Applicant is underemployed, with a baby, and no stable living arrangement. Given these circumstances, filing for Chapter 7 bankruptcy protection is a reasonable solution to her financial problems. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern.

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.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge