



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



In the matter of:)
)
) ISCR Case No. 17-02456
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

07/16/2019

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 July 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 14, 2017, and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 5, 2019, scheduling the hearing for May 30, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that I have marked AE H through P. Department Counsel did not object to the admission of AE H through P, but she

commented on the evidence. Department Counsel's e-mail is marked Hearing Exhibit (HE) I. Applicant responded to Department Counsel's comments in an additional e-mail that I have marked AE Q. AE H through Q are admitted without objection.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. She has worked for her current employer since September 2018. She seeks to retain a security clearance, which she has held since about 2008. She is a high school graduate. She married in 2016. She has two adult children and a child less than a year old. (Tr. at 17, 24-26, 29; GE 1)

Except for about a six-month period in 2013, Applicant was unemployed between September 2012 and January 2015. She was raising her teenage children without the benefit of child support, and she was taking care of an ill sister. Her sister passed away in 2015. Applicant and her mother paid for the funeral and burial expenses. Applicant and her mother own a home together and share the mortgage payments. Her mother works ten months a year at a school. They split the mortgage payments for those ten months, and Applicant pays the full mortgage payments for the remaining two months. Applicant felt that she had to keep a roof over her children's head and she concentrated on the mortgage loan while her car was repossessed and other debts went unpaid. (Tr. at 17-18, 39-40; Applicant's response to SOR; GE 1: AE I, M)

The SOR alleges a charged-off deficiency balance of \$16,323 owed on a car loan after the car was repossessed; a student loan that was \$765 past due; five delinquent medical debts totaling \$1,307; and three miscellaneous delinquent debts totaling \$1,614. Except as addressed below, the allegations are established through credit reports and Applicant's admissions.

Applicant has made periodic payments toward the deficiency owed on the car loan (SOR ¶ 1.a). She made payment arrangements with the creditor in August 2017 to pay \$50 per month. The balance then was \$16,323. She made four \$50 payments from August 2017 through November 2017; four \$50 payments from February 2018 through May 2018; a \$25 payment in April 2019; and \$50 payments in May 2019 and June 2019. The payments total \$525. The balance in June 2019 was \$15,798. Applicant stated that the creditor is willing to accept a \$3,000 lump-sum settlement, but she has been unable to afford to pay the amount requested. (Tr. at 19, 39-44; GE 2-4; AE A, F, I, Q)

In July 2017, Applicant was \$765 past due on a student loan with a balance of \$6,165 (SOR ¶ 1.b). The loan was transferred to a student loan servicing company. The April 2019 credit report shows that Applicant was current on her payments toward two student loans serviced by the company. The company approved Applicant's request for forbearance on the loans. The approval notice "confirms that [she is] willing but temporarily unable to make payments due to financial hardship." Interest will continue to accrue, but Applicant is not required to resume payments until March 2020. (Tr. at 44-48; GE 2-4; AE I, N)

Applicant opened a credit card account in May 2016. The July 2017 credit report shows the date of last action was September 2016. It shows a charged-off balance of \$1,111 (SOR ¶ 1.c). She established that she made seven monthly \$25 payments from November 2017 through April 2018; a \$10 payment in May 2018; five \$25 payments from June 2018 through October 2018; and three payments totaling \$76 from April 2019 through June 2019. The payments total \$386. The April 2019 credit report lists the balance of the debt as \$826, but that was before the most recent payments of \$76 (Tr. at 20-21, 49-50; GE 2-4; AE I, L, P)

The February 2015 credit report lists a past-due telecommunications debt in collections with a balance of \$427. The July 2017 credit report lists the debt with a balance of \$49, which is the amount alleged in SOR ¶ 1.e. That indicates that Applicant paid \$378 to the creditor between February 2015 and July 2017. Applicant paid \$31 in March 2017 to pay the final amount owed on the debt. (Tr. at 19, 57; GE 2-4; AE D)

The February 2015 credit report lists a department store credit card opened in August 2007, with a date of last action of November 2008. It shows a charged-off balance of \$454 (SOR ¶ 1.h). The account had been delinquent for almost nine years when the SOR was issued in July 2017. Applicant stated that she believed the account was paid. It was not listed on credit reports from July 2017 and April 2019, likely because it was past the seven-year reporting window. Applicant contacted the creditor and was told the creditor showed the account with a zero balance. (Tr. at 58-60; GE 2-4; AE I)

The SOR alleged five medical debts totaling \$1,307. The debts are all listed on the July 2017 credit report. From August 2017 through May 2018, Applicant made payments totaling \$367 to the company collecting the \$558 debt alleged in SOR ¶ 1.f. The \$298 debt alleged in SOR ¶ 1.d is the only medical debt listed on the July 2017 credit report. Applicant stated that she believes the medical debts are paid. None of the medical debts are listed on the April 2019 credit report. (Tr. at 19, 51-58; GE 2-4; AE O)

Applicant married in 2016. She pays the debts that she brought into the marriage; her husband pays the ones that he had; and they share responsibility for paying their current bills. She stopped paying her older debts when she was on maternity leave from October 2018 through January 2019. She resumed her payments in April 2019. She has not received formal financial counseling, but she stated that her finances are in better shape. Her husband is employed. They are able to pay their current bills while continuing to work on paying her older debts. In addition to her mortgage payments, she is paying \$624 per month on a \$28,625 car loan she took out in June 2017. She also cosigned the \$13,830 car loan for her husband's car. He pays that loan. The debt alleged in SOR ¶ 1.c is the only delinquent account listed on her April 2019 credit report. She credibly stated that she is committed to maintaining her finances in order and paying her debts. (Tr. at 24, 30-38, 44, 48-49, 60; Applicant's response to SOR; GE 2-4; AE I)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 national security eligibility will be resolved in favor of the 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 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including delinquent debts and a repossessed car. 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;
- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Except for about a six-month period in 2013, Applicant was unemployed between September 2012 and January 2015. She was raising her teenage children

without the benefit of child support, and she was taking care of an ill sister. Her sister passed away in 2015. Applicant and her mother paid for the funeral and burial expenses. Those conditions were beyond her control.

Applicant started slowly addressing her delinquent debts after she was employed again in 2015. Most of the debt alleged in SOR ¶ 1.e was paid before the SOR was issued in July 2017. She brought her student loans current before they were placed in forbearance. She made payments towards the deficiency owed on the loan for her repossessed car, a credit card, and one or more medical debts. She credibly stated that she is committed to maintaining her finances in order and paying her debts.

Applicant does not present a perfect case in mitigation, but a security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant still has several debts to resolve, and I note that she could have purchased a less expensive car in 2017. However, I also note that the most recent account became delinquent in 2016, and she has not accrued any new delinquencies since then. I believe she is honest and sincere in her intentions to address her debts. I find that she has a plan to resolve her financial problems, and she took significant action to implement that plan. She acted responsibly under the circumstances and made a good-faith effort to pay her debts. It may take time, but I am convinced that she will eventually resolve her financial problems.¹ The above mitigating 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(d):

- (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

¹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009) and ISCR Case No. 09-08462 at 4 (App. Bd. May. 31, 2011): "Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern."

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 my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.²

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.j:	For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

² The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to further monitor Applicant's finances.