



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



In the matter of:)	
)	
)	ISCR Case No. 17-03281
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

01/10/2019

Decision

GARCIA, Candace Le’i, Administrative Judge:

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

Statement of the Case

On October 17, 2017, 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 (Exec. Or.) 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 DOD on June 8, 2017.

Applicant responded to the SOR on November 2, 2017, and requested a hearing before an administrative judge. The case was assigned to me on May 10, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 24, 2018, scheduling the hearing for June 14, 2018. I convened the hearing as scheduled.

I appended to the record, as Hearing Exhibits (HE) I, II, and III, respectively, the Government's discovery letter and exhibit list, and Applicant's exhibit list. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called one witness, and submitted Applicant Exhibits (AE) A through S, which were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on June 25, 2018.

Findings of Fact

Applicant denied both of the SOR allegations. She is 52 years old. She married in 1986, divorced in 2009, and remarried in 2015. She has two children, both of whom are adults.¹

Applicant earned a bachelor's degree in 2012. She has worked for her current employer, a defense contractor, since 2017. She previously worked for another defense contractor from 2006 through 2017. She has held a security clearance since around 2008.²

The SOR alleges two delinquent consumer accounts totaling \$31,491 (SOR ¶¶ 1.a - 1.b). The allegations are established by an October 2016 credit report. SOR ¶ 1.a is for a \$14,510 charged-off credit card, and SOR ¶ 1.b is for a \$16,981 credit card in collection. Applicant opened both credit cards between 2004 and 2006. She used them primarily for her tuition expenses, as well as for household expenses and wedding expenses for her daughter in 2008.³

Applicant attributed her delinquent debts to her 2008 separation and 2009 divorce. The divorce decree held her responsible for five debts, two of which were the debts in SOR ¶¶ 1.a and 1.b. She went from a two-income to a single-income household, at a time when she earned approximately \$40,000 annually. She received spousal support for only a few months after the divorce. She did not receive child support, as both of her children were adults, but she continued to support one child who lived with her after the divorce. She was in school part-time from 2006 through 2012, and though her then-employer provided tuition reimbursement, it was not at 100%.⁴

In 2009, Applicant closed all five of her credit cards for which she was held responsible, and she retained the services of a debt consolidation company to assist her with settling them, to include SOR ¶¶ 1.a. and 1.b, as she did not have the income to pay her outstanding debts in full. She chose to try to resolve her outstanding debts rather than join her ex-husband's bankruptcy that he filed in 2009. She testified that she worked with and made payments to the debt consolidation company for three years,

¹ Applicant's response to the SOR; Tr. at 16-17, 27-31, 38; GE 1; AE D, E.

² Tr. at 26-27, 39-41; GE 1; AE C, D, G.

³ Tr. at 25-60.

⁴ Applicant's response to the SOR; Tr. at 25-60; GE 1, 3; AE C, I, J.

from 2009 through 2012, in an effort to resolve her outstanding debts. She indicated that the debt consolidation company successfully settled three of her credit cards, to include another credit card that she had with the same creditor in SOR ¶ 1.b. The 2016 credit report corroborates Applicant's claim that she resolved several other outstanding debts.⁵

Applicant testified that the debt consolidation company was unable to settle SOR ¶¶ 1.a. and 1.b. She indicated that the creditor for SOR ¶ 1.a was unwilling to work with a third party to settle the debt, and the debt in SOR ¶ 1.b was charged off in 2010 before a settlement could be reached. She did not subsequently attempt to negotiate a settlement directly with both creditors because when the debt consolidation company "called me and told me . . . that they were not able to settle those, I thought we were done. Since they were not able to, I didn't realize that I might be able to." She also indicated that at the time, her limited income prevented her from paying both debts in full, as she did not receive a significant pay raise until after she earned her degree in 2012.⁶

After she received the SOR in October 2017, Applicant testified that she immediately contacted both of the creditors for SOR ¶¶ 1.a. and 1.b, in an attempt to settle both accounts. She indicated that she had multiple conversations with the creditor for SOR ¶ 1.a, and she requested documentation regarding her efforts to settle the debt to no avail. She also indicated that she was told by both creditors that both accounts were archived and no longer in collection, and that she should reach out to the credit reporting agencies if she continued to have problems with her credit report. Both debts are not reported on her recent credit reports from 2017 and 2018, and she has not had any such problems with her credit report. She could not recall if she ever received an IRS Form 1099-A for either debt. She acknowledged that neither creditor told her that they would not accept payment towards her accounts, but stated that she and her husband would have paid both debts if she were given information about where she could send payment.⁷

As of the date of the hearing, Applicant and her husband earned a combined income of \$255,000 annually. Their assets, to include their home, total approximately \$529,000. Applicant testified that she likely took a credit counseling course when she enrolled with the debt consolidation company, and she took another such course on the date of the hearing. She indicated that she learned budgeting skills and she manages and pays her bills in a timely manner. Their budget reflects a substantial positive net remainder after their monthly expenses are paid. She does not have any other delinquent debts.⁸

⁵ Tr. at 25-60; GE 3; AE H, R.

⁶ Tr. at 25-60; AE H.

⁷ Tr. at 25-60; GE 2; AE A, O.

⁸ Tr. at 19, 22, 25-28, 32, 35-37; GE 1-3; AE A, B, K, L, M, N, O, P, Q, S.

As of the date of the hearing, Applicant's husband worked as a program manager for a defense contractor and held a security clearance since 1984. He met Applicant in 2008. He testified that he was aware of both of Applicant's delinquent debts and he also attributed them to her divorce. He testified that she told him that she previously attempted to resolve both debts through a debt consolidation company. He also testified that she told him that when she recently contacted both creditors, she was told that the accounts were archived and the debts no longer existed. He consequently advised her to ask both creditors to provide documentation reflecting such, which she did to no avail. He testified that they would have paid both debts if they were still outstanding. He testified that she had taken a credit counseling course, and he described her approach to handling finances as frugal. He testified that they handle their finances jointly, they do not have any delinquent debts, and they have timely filed their income tax returns. A number of character references described Applicant as a trustworthy, honest, and reliable individual.⁹

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(a), 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

⁹ Tr. at 15-25; AE D, F, Q, R.

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 Exec. Or. 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* Exec. Or. 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions. Applicant has had the ability since at least 2012 to try to resolve the debts in SOR ¶¶ 1.a. and 1.b. She credibly testified that she did not realize she could attempt to do so after the debt consolidation company was unsuccessful in their attempts at settling both accounts. She also credibly testified that she was willing and attempted to do so when she contacted both creditors after she received the SOR, but was unable to since both creditors told her that the accounts were archived and no longer outstanding. As such, I find that AG ¶ 19(b) is not established.

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;

(c) the individual has received or is receiving financial 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;

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

(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.

Conditions beyond Applicant's control, as previously discussed, contributed to her financial problems. Thus, the first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under his circumstances. Applicant credibly testified that she tried to resolve both of the SOR debts, as well as three other debts that were outstanding at the time, through the debt consolidation company that she worked with for three years. When the company was unsuccessful in settling both accounts, she credibly testified that she did not realize she could attempt to do so. She also credibly testified that she attempted to settle both accounts after she received the SOR, but was told by both creditors that the accounts were archived and no longer outstanding. I find that AG ¶¶ 20(b) and 20(e) apply.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

There is sufficient evidence to conclude that Applicant acted responsibly under her circumstances to address her delinquent debts. She obtained credit counseling through the debt consolidation company, and she took another such course on the date of the hearing. Both of the SOR debts are not reported on her recent credit reports from 2017 and 2018, and she does not have any other delinquent debts. Her finances are under control and there is sufficient evidence to conclude that her financial problems are unlikely to recur. Her debts do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are established.

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 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 and 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
Subparagraph 1.a – 1.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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge