



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 17-03681

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
For Applicant: *Pro se*

08/29/2019

Decision

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

Statement of the Case

On November 15, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017. On December 29, 2017, she addressed all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on June 12, 2018.

A notice of hearing was issued on June 19, 2018, setting the hearing for August 24, 2018. The hearing was convened as scheduled. The Government offered five exhibits (Exs.), marked and admitted without objection as Exs. 1-5. Applicant gave testimony and offered five documents, which were admitted into the record without objection as Exs. A-E. The transcript (Tr.) was received on August 31, 2018. On September 14, 2018, Applicant offered one additional document, which was accepted

without objection as Ex. F. The record was then closed. Based on the testimony, exhibits, and record as a whole, I find Applicant mitigated security concerns.

Findings of Fact

A 34-year-old staff assistant who has worked in the same capacity since autumn 2017, Applicant has worked for the same government agency for nearly 16 years without adverse incident. She has completed some college-level courses. Applicant had cancer surgery last year, shortly before the hearing, which hindered her progress in this process and in generating income for the time being. She subsequently took a weekend part-time job to supplement her income in order to help expedite the satisfaction of the debts at issue, and she has updated her budget accordingly. (Tr. 78) She has not yet received financial counseling.

Applicant has two minor children and was in a relationship until 2012, when the pressures of parenthood and the influence of an unsavory crowd ended their relationship and landed her partner in prison. (Tr. 19) Now reformed, the former partner is part of the children's lives, but offers scant financial assistance to Applicant ("He will pay for the things he would like to pay for like sports and stuff. . . ." Tr. 21). The eldest child's father is supposed to pay \$393 a month plus \$50 toward an arrearage. (Tr. 20-23) As of January 2017, his payments have been mostly on time and regular. (Tr. 23)

Applicant earns approximately \$77,000 a year in salary. About two years ago, she began downsizing and economizing by finding a more economical living arrangement. Her present apartment rent, which includes utilities, is less expensive than her previous apartment, but still represents her largest monthly obligation (\$1,620), plus cable and wi-fi (\$210) for her children. (Tr. 24-25) She does not have a cell phone. She has a monthly car payment plus car insurance debt (approximately \$685) for the vehicle she bought used. Childcare averages about \$250 a month.

At issue in the SOR are 12 delinquent debts (1.a-1.l) representing approximately \$23,815. Applicant was not previously aware of some of these debts, but had already made initial efforts to address others before the SOR was issued. She denied the debts noted at 1.d (collection account \$770; Date of Last Activity (DLA) 09/12) and 1.g (charged-off account for \$3,254; DLA 01/12). (Ex. 3 (Equifax) and Ex. 4 (Full Data Report/Three-In-One), respectively). Applicant disputed the former account as an unknown account and the matter was investigated. (Tr. 30-31) The same is true of the latter account. They are no longer on her Credit Karma/Three-In-One credit report dated 09/18. (Ex. F)

The Fair Credit Reporting Act (FCRA) states that most negative items must be removed from an individual's credit report seven years from the date of first delinquency. (15 U.S.C. § 1681 *et seq*) Functionally, a reporting agency is given up to seven years plus 180 days to remove a collection account. (*see, e.g.*, Credit Karma web site) As the dates of last activity plus seven years for the debts at 1.d and 1.g would be in the year 2019, and Applicant provided a comprehensive, Three-In-One-style credit

report from mid-2018 in which neither account was still noted after dispute, it may be concluded that they were dropped due to successful dispute, not age.

In her response to the SOR, Applicant provided documentation showing she has paid the debt at 1.c (\$335). She provided a logical explanation as to how a salary overcharge was represented on her credit report for 1.e (\$105), and provided documentary evidence of payment. (SOR Response; Tr. 35-38, 63)

With regard to 1.a (\$9,827), Applicant thought she had negotiated an even trade-in or repossession with a “lemon car” with which she acquired a different used vehicle from what she thought was a sympathetic dealer. (Tr. 43-49) She attached to her SOR a document showing the debt was amicably put into payroll garnishment, with monthly payments of \$701 being made to the creditor. (Tr. 72-74; SOR Response; Ex. E)

The debt at SOR allegation 1.f (\$5,433) also concerns a vehicle. This car had a charged-off balance. Once reliable, the vehicle ended up suddenly needing extensive repairs in 2010, including complete system rewiring and a new fuel pump. Given the used car’s age, it was not feasible to make all the necessary repairs. She turned the car over to the dealer and was awaiting a bill for any balance owed. She did not know she owed a balance on the vehicle until she received the 2017 SOR. In the intervening seven years, she “expected that if they were going to give [her] a bill that [she] would have received it.” (Tr. 52) With no bill for a balance ever received, she assumed she owed nothing on the vehicle after auction. Her next step is to reopen communication with this lender to see what else can be done to address this past-due judgment.

For allegation 1.b (\$3,050), the debt concerns a rental apartment complex in which Applicant lived from April 2012 until about November 2012. (Tr. 56) The apartment had many problems, including black mold, and the management office had a high turnover, frustrating any efforts on follow-through with regard to the myriad of problems. Further, general communication was poor and problems went unaddressed. (Ex. D) No documentation shows that a settlement or compromise was reached in terms of this specific debt. Applicant plans to revisit this issue next. This debt dropped to the bottom of Applicant’s list because of the difficulties approaching the managers.

Remaining are parking tickets or moving violation tickets from the same jurisdiction near where Applicant lives, noted at allegations 1.h-1.i and reflecting approximately \$1,000 in delinquent debt. (Tr. 65) They were acquired by either Applicant or her former partner. Applicant has researched these tickets and acknowledges the debts at 1.h and i.1, which she believes were satisfied through a forgiveness-amnesty program a few years ago, but has no documentary evidence to show what, if any, action has been taken on the others. (Tr. 68-70)

Going forward, Applicant is addressing her remaining debts employing a “snowball effect.” (Tr. 76) She has started with the smaller debts and is working her way up to the larger balances owed, with the intent of then breaking the larger balances down through monthly recurring payments. She plans to find paperwork to show two of

the tickets were resolved through an amnesty program, then have her former partner pay the smaller tickets which, more than likely, he incurred. (Tr. 77)

Other than the part-time job and the less expensive apartment she now inhabits Applicant has adjusted her work hours to minimize her need of daycare. She now cuts her own hair and does her own nails, and has minimized cosmetic and social needs. She is more mindful of money spent on the children.

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. 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 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 any 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.

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant had numerous delinquent debts and an adverse judgment. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

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

Three conditions could mitigate the finance related security concerns posed here:

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

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

Applicant's finances have been adversely affected over the years by unreliable partners, neither of whom maintains any influence over Applicant's finances. She has also been adversely affected by her fight with cancer. In response to both types of problems, Applicant has persevered, attempted to compensate financially in other areas (*i.e.*, finding less expensive housing and economizing), and taking a second job. Although passively imposed, her largest debt is in repayment through garnishment (1.a). The sum at issue is a reasonable sum she can manage to have deducted. The debts at 1.c and 1.e have been addressed, while the debts at 1.d and 1.g were successfully disputed and deleted in under seven years since their dates of last activity.

Applicant and her former partner are in the process of dividing up the parking and moving violation tickets equitably (1.h-l). Left unaddressed as of today are the debts at 1.b (apartment balance) and 1.f (automotive balance). On those, past attempts to work with her creditors proved frustrating and unsuccessful. However, she intends to reinstate communications with both creditors in order to see what can be done to satisfy these debts, rather than simply have them fall off her credit report due to age. Meanwhile, she is living within her means and, in improving relations with the father of her eldest child, she has stabilized child support income from one source. Her second job helps supplement her income. Based on the foregoing, I find AG ¶ 20(a), AG ¶ 20(b), and AG ¶ 20(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 34-year-old staff assistant who has served in the same governmental agency for over 15 years without adverse incident. She has attended some college. Despite unreliable child support payment histories from the father of both her minor children, she has maintained her household solely through her own efforts. She has made genuine strides to live within her means and to honor her known debts, to include obtaining a part-time weekend job shortly after cancer surgery in order to address debts she discovered on her SOR for the first time.

In sum, Applicant showed that the delinquent debts noted in the SOR at 1.a, 1.c-1.e, and 1.g have been addressed. She concedes she and her former partner need to be more diligent in dividing responsibility for, and making payments on, the tickets noted at 1.h-l. Meanwhile, she plans to reinstate efforts to find a way to address the debts at 1.b and 1.f if the creditors will now work with her.

This process does not demand that an applicant satisfy all delinquent debts at issue. It does, however, expect an applicant to have devised a workable, reasonable plan to address one's delinquent obligations, and to provide documentation showing such a plan has been successfully implemented. Applicant has met this standard, and also articulated her plan going forward to address the remainder of her obligations. Otherwise, she is living within her means without notable deprivation or difficulty, maintains a workable budget, and is credibly motivated to address all these accounts adequately. Given these facts, I conclude Applicant has met her burden and mitigated 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.l:	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