



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



In the matter of:)	
)	
)	ISCR Case No: 18-00498
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

04/12/2019

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial considerations security concerns related to her history of delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information granted.

Statement of Case

On March 27, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on April 24, 2018, and requested her case be decided by an administrative judge on the written record without a hearing (Item 1). On July 2, 2018, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant and received by her on July 13, 2018. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted a response to the FORM in August 2018, which contained numerous documents. I marked that

submission as Applicant's Exhibit (AE) A. Items 1 through 6 and AE A are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on October 16, 2018.

After reviewing the file, I reopened the record on March 13, 2019, to give Applicant an opportunity to provide additional evidence regarding the resolution of her delinquent debts. On March 27, 2019, Applicant timely submitted a cover letter with 24 pages. I marked that cover letter with attachments as AE B. Department Counsel had no objection to that exhibit.

Findings of Fact

Applicant admitted all delinquent debts alleged in the SOR, except those in ¶¶ 1.g, 1.j, and 1.l, which she said were paid. She admitted that she filed a Chapter 7 bankruptcy in 2010. (Item 1)

Applicant is 43 years old and never married. She graduated from high school in 1992, and attended college for two years. She has a 19-year-old daughter from a previous relationship. She started working for her current employer, a defense contractor, in August 2016. Prior to this position, she experienced periods of unemployment between jobs. (Item 2)

On September 13, 2016, Applicant submitted a security clearance application (SCA). In it, she disclosed a garnishment, a bankruptcy, and delinquent accounts, including several medical debts. She stated that she could not afford to pay many of them because she was supporting other people and unemployed at times. She disclosed that she filed bankruptcy in January 2010 and subsequently discharged about \$11,000 in delinquent debts. (Item 2)

On September 6, 2017, a government investigator interviewed Applicant about her background and information in her SCA, including financial matters. (Item 3) During the interview, she said that she filed bankruptcy because she was a single parent and could not pay all of her daughter's medical bills and their living expenses. She used credit cards to pay bills at times. It is unknown if she received child support. (Item 3)

In her April 23, 2018 answer to the SOR, Applicant acknowledged that she had been financially irresponsible in the past. However, she stated that she has since learned to live within her means and has used a well-known financial management system to help resolve debts. She submitted several documents with her answer indicating that she had been making payments on some medical debts that were not alleged in the SOR. She also noted that in July 2017 she paid off two open credit cards. (Item 1)

In her August 7, 2018 response to the FORM, Applicant said that she paid off an installment loan on a vehicle she had purchased, and provided proof of the payment. (AE A) She also submitted a document indicating that, as of July 2018, she had paid about

\$4,600 owed to a creditor for medical bills related to her daughter's illness. The initial debt was about \$9,000; the current balance is \$5,139. She submitted a payment plan to resolve her outstanding debts, including the two largest debts alleged in the SOR: \$6,873 and \$2,562. She intended to begin the plan in November 2018, and have the debts paid by August 2019. (AE A) In her March 27, 2019 submission, Applicant stated that she was unable to follow through on that payment plan because she incurred about \$2,400 of unexpected automobile repairs in November 2018. She said she subsequently paid the car bills. (AE B)

Applicant has not participated in budget or credit counseling, but anticipates enrolling in a formal course in the future. (AE B) She submitted a budget. Her net monthly income is \$3,010. Her expenses are about \$3,000, and include payments of about \$400 on delinquent debts and a \$100 payment to the IRS.¹ (AE B at 19)

Based on Applicant's admissions and credit bureau reports (CBR) from October 2016, January 2018, and June 2018, the SOR alleged a 2010 Chapter 7 bankruptcy and 16 debts that became delinquent between 2012 and 2016, and totaled \$15,822. Eleven allegations were unpaid medical debts and totaled \$5,199. (Items 4, 5, 6) The status of each alleged SOR debt is as follows:

(¶ 1.a) This \$6,873 debt is the balance owed to an automobile loan company for a repossessed vehicle after it was sold at an auction Applicant said she voluntarily relinquished the car because she could not afford it. She is trying to resolve smaller debts before working on the larger debts. (Item 3; AE B). It remains unresolved.

(¶ 1.b) This \$1,120 medical debt was paid in November 2015, as documented by Applicant during her September 2017 interview. (Item 3) It is resolved.

(¶ 1.c) This \$809 medical debt was paid in December 2016, as documented during her September 2017 interview. (Item 3) It is resolved.

(¶ 1.d) This \$637 medical debt was paid in January 2018. (AE B at 13) It is resolved.

(¶ 1.e) Applicant is unable to locate the creditor for this \$599 medical debt based on the information in the January 2018 CBR. (AE B) It is unresolved.

(¶ 1.f) Applicant settled the \$535 credit card debt. She made a \$144 payment on it on March 22, 2019, and is scheduled to make the final payment of \$144 on April 2019. (Item 6; AE B) It is being resolved.

(¶ 1.g) This \$461 medical debt was paid in January 2018. (AE B at 14) It is resolved.

¹ There is no information in the record about this tax debt.

(¶ 1.h) Applicant settled the \$416 credit card debt for \$225, and paid it on March 18, 2019. (AE B at 8) It is resolved.

(¶ 1.i) Applicant has been unable to locate the medical creditor for the \$253 medical debt listed on the January 2018 CBR.² (Item 5; AE B) It is unresolved.

(¶ 1.j) The \$237 collections account for an unpaid electric bill was paid, as documented during Applicant's September 2017 interview. (Item 3) It is resolved.

(¶ 1.k) The \$130 medical debt was paid in February 2019. (AE A at 15) It is resolved.

(¶ 1.l) The \$56 medical debt was paid, as documented during Applicant's September 2017 interview. (Item 3) It is resolved.

(¶ 1.m) This \$2,562 cell phone debt is unpaid. Applicant said that she is trying to resolve smaller debts before working on larger debts. (Item 4; AE B) It is unresolved.

(¶ 1.n) Applicant has been unable to locate the medical creditor for this \$727 medical debt.³ (Item 4; AE B) It is unresolved.

(¶ 1.o) The \$233 medical debt has a balance of \$180. Applicant made a payment on the debt in February 2019. (AE B at 16) It is being resolved.

(¶ 1.p) This \$174 medical debt was paid in full in December 2018. (AE B at 17) It is resolved.

SOR ¶ 1.q alleged that in January 2010, Applicant filed a Chapter 7 bankruptcy. In May 2010, the bankruptcy was discharged. She estimated that the court discharged about \$11,000 of delinquent debts. Applicant said she filed the bankruptcy because she was a single mother raising her daughter and could not afford to pay medical bills and other expenses at that time. (Item 3)

Applicant submitted letters of recommendation from family members. They praise her hardworking and honest nature. (AE A) Applicant's project manager is aware of the financial problems alleged as part of the security clearance process, but does not believe they interfere with Applicant's work or trustworthiness. Applicant's supervisor, who is also the human resource manager, stated that Applicant is an exemplary employee. (AE A)

² There is no identified creditor on this CBR or telephone number listed for this debt.

³ There is no identified creditor on this CBR or telephone number listed for this debt.

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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Based on her admissions and CBRs, Applicant has a history of being unable to meet financial obligations, which began prior to her filing a Chapter 7 bankruptcy in 2010 and continues into the present. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. Four 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, or 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; and

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

Applicant has had ongoing financial problems since 2010, when she filed a Chapter 7 bankruptcy. Although she has resolved or is resolving 11 of the 16 delinquent debts, five remain unresolved. The evidence establishes limited mitigation under AG ¶ 20(a). Applicant attributed the delinquent debts and bankruptcy to having insufficient money to support herself and daughter, and to pay medical expenses. It is unknown whether she received child support. She also admitted that she had irresponsibly managed her money at some point. To the extent that the financial problems arose from circumstances beyond her control and she attempted to manage them through payment plans and a budget, AG ¶ 20(b) partially applies. There is insufficient evidence that she participated in formal credit or financial counseling and that all delinquent debts are under control. AG ¶ 20(c) does not apply. She provided evidence that she made good-faith efforts to repay or resolve 11 of the 16 delinquent SOR-alleged debts, including two debts that were paid after she received the order re-opening the record. She established some mitigation under AG ¶ 20(d) as to those debts. She provided evidence that in July 2018, she paid off her current automobile loan. She has significantly reduced the balance on a large debt owed to a creditor, further demonstrating good-faith efforts to address debts and establishing the application of AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature individual who began working for a defense contractor in August 2016. In her September 2016 SCA, she honestly disclosed derogatory information related to her finances and delinquent debts, including a 2010 Chapter 7 bankruptcy. Since working in her current position, she has been steadily resolving debts, including one that was not alleged on the SOR. She resolved, or is resolving, 11 of the 16 alleged debts that total \$4,889. She stated she intends to address the two largest SOR debts, \$6,873, and \$2,562, after she finishes paying smaller debts. She has a budget that includes payments on delinquent debts. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.⁴

Applicant established a track record of managing debts and finances, and is demonstrating reliability. Her employer is aware of the financial problems and continues to support her request for a security clearance. Applicant is cognizant that further financial delinquencies or problems may jeopardize her position with the defense contractor. She has satisfactorily exhibited a commitment to resolving the delinquent debts. Based on her actions to date, I do not have questions or concerns about her reliability, trustworthiness, or good judgment. I find she mitigated the security concerns raised under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.q:	For Applicant

⁴ ISCR Case No. 07-06482 at 2-3) App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

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 access to classified information. National security eligibility is granted.

SHARI DAM
Administrative Judge