



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



In the matter of:)
)
) ISCR Case No. 18-00904
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

March 8, 2019

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On May 26, 2017, Applicant submitted a Questionnaire for National Security Positions (SF-86). On April 24, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On May 17, 2018, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated July 18, 2018, was provided to her by letter on July 24, 2018. Applicant received the FORM on a date unknown. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant

timely submitted additional information.¹ On December 20, 2018, the case was assigned to me.

Findings of Fact

Applicant denied all SOR allegations with explanations. Additional findings of fact follow.

Background Information²

Applicant is a 59-year-old share point developer employed by a defense contractor since August 2015. She seeks a security clearance in conjunction with her current employment. She stated that she received secret security clearances in 1980 and 2005.

Applicant graduated from high school in 1978. She served in the U.S. Army from 1980 to 1988, and was honorably discharged. Following her discharge from the Army, she remained in the Army inactive reserve from 1988 to 1992, and was honorably discharged. Applicant has been married to her current spouse since 1989. She was previously married from 1984 to 1988, and that marriage ended by divorce. Applicant has one adult daughter.

Financial Considerations

Applicant's eight delinquent SOR debts, totaling \$45,214, are established by her 2017 and 2018 credit reports as well as by her 2017 Office of Personnel Management Personal Subject Interview (OPM PSI). (SOR ¶¶ 1.a – l.h; Items 4 - 6)

Applicant's financial problems trace back to approximately 2016 when she incurred expenses required to repair a collapsed driveway and had an unexpected \$12,000 annual salary pay cut. (Item 6)

Department Counsel's FORM noted that Applicant's SOR answer fell short of what was required to mitigate her debts. He reiterated long-standing DOHA case law that it is necessary for applicants to provide documentation that debts have been paid or resolved to mitigated financial considerations security concerns. He added that even if a creditor charged off a debt, it does not relieve the debtor of paying the debt. In short, Department Counsel put Applicant on notice that additional corroborating documentation was required.

Applicant addressed these shortcomings in her FORM response. Summarized, her debts and mitigation follow. SOR ¶ 1.a – Past-due mortgage account of \$11,730

¹ Applicant's post-FORM submission was marked as Item 7, and received into evidence.

² The limited background information regarding Applicant was derived from the FORM and was the most current information available.

with a balance of \$244,762. Late fees have been paid and the account is current. **Debt resolved.** (Item 7) SOR ¶¶ 1.b – 1.d – Three student loan collection accounts Applicant incurred on behalf of her daughter in the respective amounts of \$10,350, \$8,721, \$5,626. Applicant established a Department of Education rehabilitation loan to bring accounts current and pay off all late fees and costs by January 2019. Applicant provided documentation of same, and accounts are current. **Debts resolved.** (Items 2, 7) SOR ¶ 1.e – Past-due credit card account for \$3,141 with a total balance of \$7,422. Documentation submitted reflects a zero balance and “account was in dispute-now resolved-reported by subscriber” in 2017. **Debt resolved.** (Item 7) SOR ¶ 1.f – Charged-off consumer account for \$2,921. Applicant provided documentation that lawsuit to collect debt was dismissed in county court in 2017. Furthermore, she filed disputes with credit reporting bureaus to have this debt removed from her credit report. **Debt resolved.** (Item 7) SOR ¶ 1.g – Charged-off credit card account for \$1,412. Account paid in full in 2018. **Debt resolved.** (Items 2, 7) SOR ¶ 1.h – Charged-off credit card account for \$1,313. Settled for lesser amount in 2018. **Debt resolved.** (Items 2, 7)

Applicant sought financial counseling in 2016, and she plans to consolidate multiple payday loans she amassed following her driveway collapse and salary pay cut. (Item 5)

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 clearance favorable 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying 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.” Based on the information in the SOR, the record

established the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five potential mitigating conditions:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorffmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt

is a “continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, she receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and her behavior does not cast doubt on her current reliability, trustworthiness, or good judgment.

Application of AG ¶ 20(b) is warranted. Applicant could not have predicted that her driveway would collapse or that she would incur a substantial pay cut in 2016. AG ¶¶ 20(c) and 20(d) are fully applicable. Applicant received financial counseling and her debts are resolved. She heeded Department Counsel’s concerns regarding her SOR answer documentation shortcomings. Of note, she contacted all of her creditors and has regained financial responsibility.³ AG ¶ 20(e) is not relevant.

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 the 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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant’s Army service and employment with a defense contractor weigh heavily in her favor. She is a law-abiding citizen and a productive

³ “Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

member of society. She is current on her day-to-day expenses, lives within her means, and her SOR debts are resolved.

Applicant understands what she needs to do to establish and maintain her financial responsibility. Her efforts at debt resolution have established a “meaningful track record” of debt re-payment.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.h:	For Applicant

Conclusion

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Clearance is granted.

ROBERT TUIDER
Administrative Judge