



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 18-00969
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esquire, Department Counsel
For Applicant: *Pro se*

12/17/2018

Decision

HOGAN, Erin C., Administrative Judge:

On April 27, 2018, 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 (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) effective within the DOD on June 8, 2017.

On June 27, 2018, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on July 12, 2018. On August 1, 2018, Applicant received the FORM. Applicant had 30 days to submit a response to the FORM. She did not submit a response. On September 20, 2018, the FORM was forwarded to the Hearing Office and assigned to me on December 12, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 35-year-old employee of a DOD contractor seeking a security clearance. She has worked for her current employer since 2013. Her highest level of education is an associate's degree. She separated from her husband in 2010 and has an 18-year-old daughter from a previous relationship. (Item 3)

On February 1, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing. (Item 3) A subsequent background investigation revealed Applicant had the following delinquent debts: a \$29,169 deficiency account on a mortgage that was foreclosed in 2014 (SOR ¶ 1.a: Item 5 at 2; Item 6 at 8); a \$91 debt placed for collection in January 2012 (SOR ¶ 1.b: Item 5 at 2; Item 6 at 8) and two medical accounts in the amounts of \$345 and \$181 placed for collection in December 2012 and February 2013 (SOR ¶¶ 1.c and 1.d). In her response to the SOR, Applicant admitted SOR ¶ 1.a, but denied the remaining three allegations. (Item 2)

Applicant started having financial problems in 2010 when she separated from her husband. He was unfaithful and eventually went to jail. The record is not clear on whether her husband remains incarcerated. She could not make the mortgage payments without her husband's income. Her home was foreclosed in July 2014, which resulted in the deficiency balance alleged in SOR ¶ 1.a.

She provided confirmation numbers next to each of the remaining SOR allegations. While it would have been better to have provided a statement from the creditor indicating the debt was paid in full, I find SOR ¶¶ 1.c and 1.d for Applicant, because they are no longer on her most recent credit report. (see Item 5) The \$91 debt alleged in SOR ¶ 1.b is a minimal amount and does not raise significant security concerns. The debt of most concern is the \$29,169 mortgage foreclosure deficiency debt alleged in SOR ¶ 1.a. Applicant intends to pay this debt off when she completes making payments towards her smaller debts.

There are several debts that were not alleged in the SOR, which Applicant paid off. At least five delinquent debts were paid off by Applicant before the SOR was issued. She appears to be systematically paying off her delinquent accounts when she is able to do so. (Item 4; see *also* Items 5 and 6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied in conjunction with the

factors listed in the adjudicative process. The administrative judge's over-arching 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 access 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 that 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 information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. 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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

All of the above disqualifying conditions apply because Applicant incurred several delinquent debts, to include a \$29,000 deficiency balance as a result of a mortgage foreclosure.

The security concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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 financial counseling service, and there are clear indications 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.

AG ¶ 20(a) applies because Applicant was unable to pay the mortgage after she and her husband separated in 2010. Her ability to pay the mortgage was further aggravated by her husband's incarceration. While Applicant still owes the mortgage deficiency debt, she has paid off several of her delinquent accounts that were not alleged in the SOR. Applicant's financial situation occurred under unusual circumstances that are unlikely to occur. Her efforts to resolve her financial situation demonstrate reliability and trustworthiness.

AG ¶ 20(b) applies because circumstances beyond Applicant's control adversely affected her financial situation. Her marital separation in 2010 and her husband's subsequent incarceration affected her ability to pay her mortgage as well as other expenses. Two of the delinquent debts alleged in the SOR were medical expenses. Applicant acted responsibly under the circumstances. She systematically resolved several debts that were not alleged in the SOR. There is sufficient evidence to conclude that the two medical bills alleged in SOR ¶¶ 1.c and 1.d were paid. They no longer appear on her most recent credit report. Applicant acted responsibly under the circumstances.

AG ¶ 20(c) partially applies. While there is no indication that Applicant attended formal financial counseling, her current financial situation is relatively stable and within her control. Given the circumstances, her financial situation could have been worse, but it is clear that she managed her debts within reasonable parameters.

AG ¶ 20(d) applies. There is strong circumstantial evidence that Applicant has resolved the two medical debts alleged in SOR ¶¶ 1.c and 1.d. I also considered the five unalleged delinquent debts that Applicant resolved before the SOR was issued. Applicant is making a good-faith effort to resolve her delinquent debts.

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.

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 Applicant's employment history with a DOD contractor since 2013. I considered her marital separation and her estranged husband's incarceration. I considered that she is raising her daughter alone. I considered that circumstances beyond Applicant's control contributed to her financial problems. Applicant is methodically resolving her delinquent accounts within her ability to do so. The security concerns raised under financial considerations are mitigated. Applicant is warned that future delinquent debts may result in her security clearance being revoked.

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.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge