



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



In the matter of:)
)
) ISCR Case No. 18-02819
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro Se*

09/05/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant is committed to a financial plan established by a consumer credit counselor, and she has made sufficient progress in resolving her delinquent debts. The resulting financial security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 23, 2017, Applicant submitted a security clearance application (SCA). On December 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD 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 Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 17, 2019, and requested a hearing before an administrative judge. She admitted all 21 SOR allegations, (SOR ¶¶ 1.a - 1.u.), but did not attach any supporting documentation with her response. On June 5, 2019, the case was assigned to me. On June 6, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 27, 2019. The hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; Applicant offered no exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 10-13; Government Exhibit (GE) 1-6). I held the record open until July 29, 2019. On July 11, 2019, DOHA received the hearing transcript. On July 23, 2019, Applicant submitted five documents; there were no objections; and I labeled Applicant Exhibits (AE) A-E, and the documents are admitted into evidence. The record closed on July 29, 2019.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 42 years old and was previously employed in a warehousing position from 2010 to 2016. In September 2014, the employees went on strike for approximately six months. In January 2017, she obtained word processing employment with a DOD contractor. She received a certification from a college of business in 1997. She was married in 2006, and she has two daughters, ages 6 and 11. She currently possesses a DOD security clearance. (Tr. 14-19, 35; GE 1)

Financial Considerations

The SOR alleges that Applicant has 21 delinquent accounts totaling about \$24,000. Approximately half of the accounts are for unpaid medical expenses. She admitted that the debts developed over a long period of time, and were initially ignored by her. Her financial problems worsened after Applicant and her husband, who were working for the same employer, went on strike in September 2014. For six months, they each received \$150 weekly strike pay to support their family. In March 2015, the union ended the strike, and they resumed their employment with less pay per hour. In 2016, Applicant was laid off after working for her employer for seven weeks. In January 2017, she was offered a position with her current employer. In 2017, she and her husband realized that they needed to take action and resolve their delinquent accounts. (Tr. 20-30, 33-34)

In mid-2017, Applicant's father-in-law offered to let the family stay at his house rent-free, He also paid for all of the utilities, and they were responsible for their own groceries. He wanted to help them take control of their growing debt. After Applicant and her family moved in with her father-in-law, she began making payments on the delinquent accounts; however, her father-in-law unexpectedly passed away a few

months later. They assumed his mortgage payment and the utilities for the house. (Tr. 20-30, 33-34)

SOR ¶¶ 1.a, 1.d, 1.g, 1.j, 1.l-1.s, and 1.u, allege unpaid medical accounts totaling \$13,500. Applicant underwent unexpected surgery in 2016. She had medical insurance, but the remaining balance that was her responsibility was overwhelming. In addition, her children suffered with medical issues periodically, and the insurance only covered a small portion of the medical expense. At the time of the hearing, she did not have any payment arrangements in place with her medical creditors, but it was her intention to pay these accounts. The medical debts remain unresolved. (Tr. 39-41)

SOR ¶ 1.b alleges a student loan account referred for collection with the Department of Education in the amount of \$6,460. In January 2019, Applicant made arrangements to rehabilitate this account by paying \$222 a month for nine months to take the student loans out of default status. The payments are automatically withdrawn from her bank account, and she has not missed any payments. This account will be in good standing by October 2019. Applicant provided documentation of this account which showed that as of June 2019, she had reduced the outstanding loan balance to \$5,195. The student loan debt is being resolved. (Tr. 37-39; AE C)

SOR ¶ 1.c alleges an auto loan account charged-off in the amount of \$1,607. In 2017, Applicant was involved in a car accident, and the other driver was at fault. The accident totaled her van. The insurance compensation did not cover the full amount of her auto loan. At the time of the hearing, Applicant had not yet made arrangements with the creditor to resolve this account. (Tr. 41-42)

SOR ¶¶ 1.e and 1.k allege two delinquent credit card accounts with a collection agency in the total amount of \$839. Applicant is currently in a repayment plan with this creditor, and these accounts will be fully resolved in the near future. After the hearing, Applicant timely provided documentation that showed one of the accounts is paid in full. The remaining account is currently being paid. (Tr. 37-38; AE B; SOR response)

SOR ¶¶ 1.f, 1.h, 1.i and 1.t allege delinquent accounts totaling \$1,549. At the time of the hearing, Applicant had not yet made arrangements with the creditors to resolve these accounts. These debts are unresolved.

In March 2019, Applicant contacted a consumer credit counseling agency, and she and her spouse received financial counseling. The credit counselor assisted her in setting up a plan to prioritize her debts. Applicant has a monthly budget in place, and she intends to meet with a realtor to discuss selling her father-in-law's house. Applicant has asserted that once the house is sold, she will use some of the sale proceeds to pay her delinquent debts. She is current on her monthly financial obligations and has not created any new delinquent debt. Last year, Applicant and her spouse made collectively \$72,000. She provided documentation of her budget, her consumer counseling program, and a notarized statement from her brother-in-law stating his intent to share all proceeds once the house is sold. (Tr. 43-, 52; AE A, AE D, AE E)

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 AG 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. 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. 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 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 an applicant may deliberately or inadvertently fail to 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 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.”

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

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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 SOR alleges 21 delinquent debts totaling \$24,000, with about half of these accounts resulting from unpaid medical services. Applicant's accumulation of debt resulted from underemployment, a prolonged employment strike with minimal income, and unexpected health problems. These are circumstances beyond her control. Applicant began a student loan rehabilitation program, has significantly reduced the outstanding balance, and is very close to having the defaulted loans placed in good standing. She has also paid off and is currently repaying other debts that were referred for collection. She is utilizing information gained from her credit counseling by prioritizing her debts. She has established a stable monthly budget, and is making sufficient progress with her past-due financial obligations.

At the hearing, Applicant was very candid about her financial issues. Due to the unusual circumstances that resulted in the accumulation of delinquent debt, future financial problems are unlikely to recur. She has shown good faith efforts in resolving her delinquent debts. There are clear indications that her financial problem is being resolved, and her finances are under control. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) are established, and financial considerations security concerns are mitigated.

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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has taken positive steps to correct her outstanding financial obligations. She has made consistent monthly payments to rehabilitate her delinquent student loans. She has paid in full a collection account, and is continuing to make monthly payments on another collection account. She obtained financial counseling, and is using that knowledge to prioritize her financial obligations. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations security concerns are mitigated.

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.u:	For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge