



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



In the matter of:)	
)	
)	ISCR Case No.19-00214
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric C. Price, Esquire, Department Counsel

For Applicant: *Pro Se*

09/23/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant’s clearance.

On 8 February 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 7 May 2019 and I convened a hearing 11 June 2019. DOHA received the transcript 20 June 2019.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, hearing exhibit (HE) I, and Applicant exhibits (AE) A-I. AE AE H-I were timely received post hearing. The record closed 25 June 2019, when Department Counsel stated no objection to AE I.

²DoD acted 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 Security Executive Agent Directive 4, effective on 8 June 2017.

Findings of Fact

Applicant denied the SOR financial allegations, except SOR 1.b. and 1.g. She denied the remainder of the allegations on the grounds that they had been settled, or were in repayment. Applicant is a 28-year-old diplomatic security officer employed by a defense contractor since September 2017. She has never married and has no children. She claims to have previously had a background investigation by another Government agency, but was unable to provide a date. This is her first application for an industrial clearance (GE 1).

The SOR alleges, and GE 2-6 substantiate, six delinquent debts totaling over \$10,000. While the SOR alleges that all six accounts were charged off, Applicant's January 2019 report (GE 4)—upon which the SOR is based, shows that SOR debts 1.a and 1.c were closed, but not charged off. All six debts had last activity dates of June or July 2018. Applicant admitted filing a Chapter 7 bankruptcy petition in August 2018, a petition that was dismissed in November 2018 for abuse. She also admitted SOR debt 1.b because she had not yet been able to settle the account. The creditor would not agree to a settlement amount while the account still appeared on Applicant's credit report as being in bankruptcy.

Applicant frankly attributed her financial problems to her irresponsible financial behavior while in college. Like her mother before her, she used credit cards to pay living expenses, and then just made the minimum payments on the accounts. However, her September 2017 credit report (GE 3) shows no delinquent debt, including several debts that were later alleged in the SOR. After Applicant obtained her job as a security officer, and began to discuss her finances with her sensible older brother, she was feeling overwhelmed about her consumer debt and her education loan debt. She consulted a bankruptcy attorney who recommended filing for bankruptcy protection without telling her that her income was too high to qualify to discharge her consumer debt. She filed her Chapter 7 petition in August 2018. She discussed the bankruptcy with a Government agent in September 2018 (GE2). The petition was dismissed in November 2018 for abuse—the statutory term for ineligibility. However, even the bankruptcy judge noted that she might have been eligible for bankruptcy under another chapter, perhaps a Chapter 13 wage earner plan (GE 6). Applicant's attorney later told her the petition was dismissed because she lived at home, not on her own.

After the new year, Applicant began addressing her delinquent debts. Operating from a January 2019 dunning letter from the collection agent for SOR debt 1.a, which invited settlement discussions, Applicant negotiated a settlement of 50% of the debt. Applicant annotated the letter to show that the payment was due in February 2019. She produced a February letter from the collection agent confirming resolution of the account (AE A). Similarly, the collection agent for SOR debt 1.b reached out to Applicant in early March 2019, she reached an unstated agreement, and received confirmation of payment from both the collection agent and the creditor in late March 2019 (AE B). So too, the SOR 1.c collection agent settled the debt in late February 2019, for 75% of the amount

due, and documented final payment in March 2019 (AE C). Working from a late November 2018 credit card statement, Applicant entered into a 12-month repayment plan in December 2018, which required her to make a large deposit payment in late December 2018, then lower monthly payments through November 2019 (AE D). Applicant made the first three payments as required, and paid the last nine installments in a lump sum in March 2019 (AE H, I). In early February 2019, the collection agent for both the SOR 1.e and 1.f creditor (a bank whose principal business is issuing store credit cards) sent Applicant two dunning letters. Later that month, Applicant settled each account for about 45% of the amount due. She received confirmation of payment in mid-April 2019 (AE E, F).

Applicant received the financial counseling required to file a bankruptcy petition. She submitted no budget. However, she submitted a detailed report chronicling the status, not only of the SOR debts, but of several other debts that were never delinquent to the Government's knowledge, along with documentation of her efforts to deal with the creditors on those debts. She did not present any evidence from coworkers, character references, or community groups.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.³

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant was clearly irresponsible with her finances during her college years, having numerous consumer credit accounts that she kept going by just making the minimum payments. When she got her first real job out of college she began to realize that this course of action was not sustainable. She consulted an attorney, who gave her bad advice, and she filed for Chapter 7 bankruptcy, which she was not entitled to do because of her income level. However, by this time the damage was done. Having apparently stopped making payments on the SOR accounts during the run up to her petition filing and during the pendency of the petition, the accounts fell delinquent largely as alleged in the SOR.⁴ However, once her bankruptcy petition was dismissed, she began to address the debts in an orderly fashion. It appears that Applicant was engaging the creditors on two debts before the SOR was issued, and dealing with the creditor on two more debts before she received the SOR. By the time Applicant answered the SOR, each of the SOR debts was resolved or heading for resolution, although some confirmations of final resolution were not received until after she answered the SOR.

However, Applicant meets the mitigating factors for financial considerations. Her financial difficulties are actually few, although recent, but may be considered unlikely to recur.⁵ Although her financial problems were not due to circumstances beyond her control, but once her abortive attempt to file for Chapter 7 bankruptcy was closed, she began reasonable efforts to resolve the debts.⁶ A similar analysis, including completion of the bankruptcy-required financial counseling, supports a conclusion that the debts have been resolved through settlement,⁷ and that that resolution was made in good faith.⁸

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to

⁴¶9(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations;

⁵¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁶¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁷¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

⁸¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

resolve the financial problems, accompanied by significant actions to implement the plan.⁹ Applicant's efforts to date constitute such a plan, and she has documented significant action to resolve her debts. Applicant seems to have learned her lesson about financial responsibility, and appears unlikely to experience financial problems under these circumstances again. Applicant has adequately addressed the security concerns raised by her past irresponsibility. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-g: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR.
Administrative Judge

⁹ISCR Case No. 07-06482 (App. Bd. 21 May 2008).