



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



In the matter of:)	
)	
)	ISCR Case No. 19-02131
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Department Counsel
For Applicant: *Pro se*

03/31/2020

Decision

Curry, Marc E., Administrative Judge:

Applicant has a substantiated, good-faith basis to dispute the allegedly outstanding student loan. Of the three remaining debts alleged in the Statement of Reasons (SOR), the evidence the Government presented did not establish one of them, and the other two, collectively totaling less than \$2,200, do not generate a security risk, in light of Applicant's salary and the absence of any other indicia of financial instability. Applicant has mitigated the security risk.

History of the Case

On October 3, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The SOR alleged four delinquent debts (1.a – 1.d). The DOD CAF took the action 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 (AG) effective for any adjudication made on or after June 8, 2017. On October 23, 2019, Applicant answered the SOR, admitting subparagraph 1.a, admitting 1.b, in part, and denying subparagraphs 1.c and 1.d. She requested a hearing, whereupon, the case was assigned to me on February 6, 2020. On February 19, 2020, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for February 28, 2020. (Applicant waived her right to 15 days notice of hearing.) The hearing was held as scheduled. I received four Government exhibits (GE 1 – GE 4) and five exhibits from Applicant (AE A - AE E), together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). The transcript (Tr.) was received on March 6, 2020.

Findings of Fact

Applicant is a 44-year-old single woman with one child, age 3. She earned an undergraduate degree in 1998, followed by a master's degree in 2005. She works for a defense contractor as a travel coordinator. (Tr. 18) She has worked for the same employer for the past six years.

The SOR alleges a student loan delinquency totaling \$32,110 (subparagraph 1.a). Applicant disputes this debt, contending that her grandmother, who paid for her college education, satisfied this loan in 2004. (GE 2 at 10) Moreover, Applicant asserts that she had no idea this debt appeared on her credit report as unresolved until she applied for a mortgage loan in 2008. (Tr. 14) She provided the bank's loan officer with a letter from the student loan creditor, dated August 24, 2004, notifying her that her student loan was fully satisfied. (GE 2 at 10) Subsequently, the mortgage loan was approved and Applicant purchased the home. (GE 3 at 1)

Applicant received no further derogatory information about this allegedly outstanding loan until she applied for a security clearance in 2018. (Tr. 32) Then, two credit bureau reports generated as part of her background investigation noted that the debt still existed, had been transferred to another lender, and was in collection. (GE 3 at 2; GE 4 at 2) When Applicant sent the new creditor a copy of the 2004 letter informing her that the debt was satisfied, the creditor stated that this was not dispositive, and it instructed her to provide additional information, such as a cancelled check. (Tr. 36) By then, Applicant could not procure any additional information from her grandmother because her grandmother had been deceased for 12 years.

Applicant then began searching for an attorney to contest the debt. (Tr. 38) While she was looking for an attorney, the creditor garnished her wages for \$700 monthly. (Tr. 34) On February 12, 2020, Applicant entered into a rehabilitation agreement with the creditor in which she agreed to satisfy the debt in \$5 monthly payments. (AE B; Tr. 39) This rehabilitation loan is a bridge to a federal government student loan for which Applicant applied on February 20, 2020. (AE A) Although Applicant still contends that the loan was satisfied in 2004, she has decided to continue executing a consolidation and payment plan in the event that her dispute is unsuccessful. (Tr. 37-38)

The debt alleged in subparagraph 1.b is a cable television bill allegedly totaling \$795. Applicant admits that she owes the creditor money, but denies that the amount is as high as alleged in the SOR. Specifically, she admits that she was two months behind on her bill when she stopped service in June 2018, but contends that the total was \$350, not \$795. (Tr. 42; Answer at 2) After receiving the bill with the allegedly incorrect amount due in September 2018, Applicant began contacting the creditor to dispute it. (Tr. 41) Despite multiple attempts to contact the creditor, she has yet to receive a response. She does not want to pay the \$350 balance that she agrees is owed unless she can verify with the creditor that that amount represents the full and final amount due. (Tr. 42)

The debt alleged in subparagraph 1.c totals \$1,304. Applicant disputes it, contending that she once had a credit-card account with this company, but that she satisfied it ten years ago. She disputed it online, but provided no documentary evidence supporting her contention. (Tr. 46)

The debt alleged in subparagraph 1.d totals \$1,633. Applicant contends that she satisfied this debt. Specifically, she had a previous account with the same credit card company. When she closed it several years ago, there was no outstanding balance. Applicant contends that payments to the account alleged in subparagraph 1.d were being erroneously credited to the old account. The only exhibit the Government submitted in support of the existence of this debt is a credit bureau report which indicates that the bill is in dispute and that Applicant formally disputed it six months before she underwent her investigative interview. (GE 4 at 5) It no longer appears on any of her updated credit reports. (AE C - AE E)

Applicant earns \$91,000 annually. (Tr. 18) She contributes 5 percent each pay period to her retirement plan and saves \$100 each month in a college savings account. (Tr. 58) Her mortgage payments and her car note payments are current.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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. 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18, as follows:

Failure or inability 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 An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The only evidence the Government provided in support of its contention that the debt alleged in subparagraph 1.d is delinquent is a credit bureau report that indicates that it is in dispute status. In light of Applicant's denial, this is insufficient to meet the Government's initial burden of proof. (Directive, ¶ 3.1.14) I resolve subparagraph 1.d in Applicant's favor.

The remaining SOR debts trigger the application of the disqualifying conditions under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." The largest SOR debt is a student loan. Applicant contends that her grandmother satisfied it more than 15 years ago, and provided a letter from the creditor supporting this contention. Arguably, this is not dispositive, as the original creditor may have designated it as satisfied after the current creditor paid it off in exchange for the assignment of the right of collection. At minimum, the satisfaction letter constitutes a substantiated, good-faith basis to dispute the legitimacy of the past-due debt, particularly given that Applicant can no longer verify the debt's repayment with her since-deceased grandmother. Although Applicant continues to deny responsibility for this debt, she has made payment arrangements in the event that her efforts at disputing the debt are unsuccessful. Under these circumstances, AG ¶ 20(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," applies.

Although Applicant did not provide documentary evidence substantiating her dispute of the debts alleged in subparagraphs 1.b and 1.c, they are collectively less than \$2,200. Given Applicant's annual salary and the absence of any other indicia of financial problems, I conclude these nominal unresolved debts generate little to no security concern. Applicant has mitigated the financial considerations security concern.

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.

Marc E. Curry

Administrative Judge