



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



In the matter of:)	
)	
)	ISCR Case No. 19-02347
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Pro se

March 26, 2020

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On September 17, 2019, the Defense Office of Hearings and Appeals (DOHA) 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on October 30, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 27, 2020. DOHA issued a notice of hearing on February 13, 2020, and the hearing was convened as scheduled on March 5, 2020. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant’s Exhibits A through G, which were admitted without objection. Applicant also testified on her own behalf. The record

remained open until close of business on March 19, 2020, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 16, 2020.

Findings of Fact

Applicant is 33 years old and single. She has a bachelor's of science degree in electrical engineering. She holds the position of systems engineer for a defense contractor. She seeks to obtain a security clearance in connection with her employment in the defense industry.

The SOR alleges that Applicant has 10 delinquent accounts totaling approximately \$60,000. Her student loan debt totals approximately \$50,233.39 of the total. The remaining debt is medical debt. In her Answer, Applicant admits each of the allegations and provides explanations. Credit reports of the Applicant dated October 19, 2018; May 10, 2019; January 23, 2020; and March 4, 2020, reflect that each of these debts was at one point owing. (Government Exhibits 3, 4, 5, and 6.)

Applicant is a native-born American citizen who did not come from a financially privileged background. Her parents are Haitian immigrants who became naturalized citizens of the United States, wanting better opportunities for themselves and their children. Applicant was taught to work hard, obtain her education, and make her parents proud, by creating a better life for herself. Applicant did just that. She was a high achiever and an excellent student. She did exceptionally well in high school and was admitted to a prestigious out-of-state university. Her parents could not afford to pay for her college education and so she obtained student loans to attend. Applicant always had every intent to pay back her student loans.

From 2004 to 2007, Applicant completed three and a half years at this university, and did well, before a tragic event. A shooting occurred on campus which killed 20 people. For her safety, Applicant moved back home and transferred to a local in-state university to finish her degree. This disruption in her education caused even more expenses. When Applicant transferred to the local in-state university, she initially started school on a full-time basis, but soon had to go part time, while working odd jobs, in order to pay for her living expenses and tuition. She always lived frugally. Applicant graduated from this university in May 2014, and had a challenging time obtaining employment. Two years before she graduated, in 2012 or 2013, some of her student loans became due, and Applicant had no ability to pay them. She tried to defer them, but because they were private loans they could not be deferred beyond five years. She tried to work out a payment plan, but the payments the creditors offered were more than she could afford to pay. Applicant further testified that when she turned 26, she no longer had medical benefits as a student, and the two medical bills she incurred on the SOR became owing and delinquent because she did not have the money to pay them.

It was not until August 2018, that Applicant obtained a full time job when she was hired by her current employer. At that time, she contacted her creditors, and found out that her debts were in a charged-off or default status. They offered her settlements, but they were large sums that she did not have. Applicant started saving her money toward paying the settlement amounts as soon as she started working. Applicant testified that she has paid off all of the delinquent debts set forth in the SOR except one, allegation 1.b.

Allegation 1.a., is a delinquent student loan debt that was charged off in the approximate amount of \$13,654. Applicant settled this debt on October 29, 2019, in the amount of \$1,413.51, and it is deemed paid in full. (Applicant's Exhibit B, C, and D.)

Allegation 1.b., is a delinquent student loan debt that was placed for collection in the approximate amount of \$11,797. Beginning in October of 2019, Applicant started making regular payments between \$100 and \$150 monthly to resolve this debt. She plans to continue to do so until the debt is resolved. (Applicant's Exhibit A, and Tr. pp. 32-34.)

Allegation 1.c., is a delinquent student loan debt that was charged off in the approximate amount of \$10,940. Applicant settled this debt on October 29, 2019, in the amount of \$1,132.51, and it is deemed paid in full. (Applicant's Exhibit B, C, and D.)

Allegation 1.d., is a delinquent student loan debt that was charged off in the approximate amount of \$6,339. Applicant settled this debt on October 29, 2019, in the amount of \$656.28, and it is deemed paid in full. (Applicant's Exhibit B, C, and D.)

Allegation 1.e., is a delinquent student loan debt that was charged off in the approximate amount of \$4,643. Applicant settled this debt on October 29, 2019, in the amount of \$480.67, and it is deemed paid in full. (Applicant's Exhibit B, C, and D.)

Allegation 1.f., is a delinquent student loan debt that was charged off in the approximate amount of \$3,007. Applicant settled this debt on October 29, 2019, in the amount of \$311.31, and it is deemed paid in full. (Applicant's Exhibit B, C, and D.)

Allegation 1.g., is a delinquent student loan debt that was charged off in the approximate amount of \$11,286. Applicant settled this debt on October 29, 2019, in the amount of \$1,205.72, and it is deemed paid in full. (Applicant's Exhibit B, C and D.)

Allegation 1.h., is a delinquent medical debt that was placed for collection in the approximate amount of \$318. Applicant paid this debt on October 22, 2019. (Applicant's Exhibit E.)

Allegation 1.i., is a delinquent debt that was placed for collection in the approximate amount of \$168. Applicant settled this debt on October 28, 2019. (Applicant's Exhibit G.)

Allegations 1.j., is a delinquent medical account placed for collection in the approximate amount of \$165. Applicant paid this debt on October 22, 2019. (Applicant's Exhibit F.)

An undated letter from the Applicant's manager indicates that she has been Applicant's manager since February 2019. Applicant is heavily relied on by her program lead, and is considered to be an invaluable member of the team. Although she is still a junior engineer, she is "good and reliable", and interfaces well with others. Applicant is highly valued by the department, and is recommended for a security clearance. (Applicant's Post-Hearing Exhibit A.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 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 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

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant took out student loans in order to obtain a college degree. Applicant indicated that she has always had every intent to pay back her student loans. A highly unexpected tragic event, a shooting on campus, caused her to have to transfer to another university to finish her degree. Upon graduation, she had difficulty finding suitable employment. In addition, most of her student loans became due before she actually graduated from college. As a result, she defaulted on the loans. Because she was unable to pay these debts, she became delinquently indebted, the evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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, or 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Circumstances beyond her control certainly caused Applicant's financial difficulties. Since gaining employment Applicant has paid off, or resolved, all but one of her delinquent debts. She has acted reasonably and responsibly under the circumstances. Regarding the remaining student loan, she is making regular monthly payments to resolve it and plans to continue to do so until it is resolved. Applicant has shown good judgment and reliability. There are clear indications that her financial problems of the past are resolved and are under control. She has also demonstrated a good-faith effort to resolve her debts. AG ¶ 20(b) and 20(d) provide full mitigation. The Financial Considerations concern has been 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 relevant 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 is a junior engineer who shows great potential and who is well respected by those she works with. She clearly understands the great responsibilities she has in holding a security clearance. She has shown the requisite good judgment, reliability, and trustworthiness required of this privilege.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns.

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. through 1.j.:	For Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge