



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



In the matter of:)	
)	
)	ISCR Case No. 19-01640
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2021

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

History of the Case

On November 8, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on December 4, 2019 (which contained attachments that were considered as part of her answer), and she requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 31, 2021, and the hearing was convened as scheduled on April 26, 2021, using the Defense Collaboration Services (DCS) video teleconferencing

capabilities. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The Government's exhibit list and its discovery letter sent to the Applicant were marked as hearing exhibits (HE I and II). Applicant testified, and offered exhibits (AE) A (containing imbedded supporting documentary evidence, which are marked consistent with the SOR allegation each relates to) and B (credit reports from April 2021 from three credit reporting services). The record was kept open to allow Applicant to submit additional evidence, which she did in the form of AE C and D. Both were admitted without objections. DOHA received the hearing transcript (Tr.) on May 14, 2021.

Findings of Fact

Applicant admitted some of the allegations and denied others. Her admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 42-year-old employee of a defense contractor. She has worked for her current employer as an administrative professional since February or March 2019. Her job location is currently in Afghanistan. She has worked for a defense contractor in either Afghanistan or Iraq for approximately 14 years. She served in the U.S. Army on active duty for six years and was honorably discharged. She deployed to Iraq in 2003. She attained her general educational development (GED) and has taken some college courses. She has never married and has no children. She provides financial support for her mother and sisters. (Tr. at 7, 26-30; GE 1)

The SOR alleged that Applicant had 20 delinquent collection and charged-off debts totaling approximately \$44,773. (SOR ¶¶ 1.a-1.t) The debts are established by Applicant's admissions and entries on several credit reports. (GE 4-6; Answer to SOR)

Applicant's financial difficulties were exacerbated by two significant events. In 2010 to 2011, she was between contractor deployments and decided to start her own business. She accumulated some significant debts from this business start-up. Her business failed and she became personally responsible for the delinquent debts. Thereafter, she started working for another contractor in a deployed setting. The second incident that impacted her finances was an injury she sustained while deployed in approximately 2015-2016. In approximately March 2015, she broke her foot and returned state side. She received workers' compensation due to her injury until about July 2016 when it stopped. She then went through periods on unemployment and temporary employment until she was hired by a defense contractor for a deployment position in September 2017. Since 2019, Applicant has made a concerted effort to resolve her debts. (Tr. at 27-28; GE 2)

The status of Applicant's delinquent debts is as follows:

SOR ¶ 1.a-\$10,974. Initially, Applicant disputed this automobile debt based upon her belief that she was the victim of predatory lending practices. She ultimately decided to settle the debt in September 2020 and provided documentation corroborating the settlement. This debt is resolved. (Tr. 31, 33; AE A (See attachment); Answer to SOR)

SOR ¶ 1.b-\$4,653. Applicant incurred this debt when she dropped from a college course, but was still charged for it. She documented paying the debt in May 2020. This debt is resolved. (Tr. 37; AE A (See attachment))

SOR ¶ 1.c-\$4,535. Applicant incurred this debt from her failed business. She documented settling the debt in August 2019. This debt is resolved. (Tr. 38-40; AE A (See attachment))

SOR ¶ 1.d-\$3,732. Applicant cosigned with her mother on a lease agreement. Her mother left the apartment before the lease termination period and was assessed a charge. Applicant disputed this debt and it no longer appears on her credit reports. This debt is resolved. (Tr. 38-41; GE 8; AE B)

SOR ¶ 1.e-\$1,700. Applicant cosigned with her mother on a lease agreement. Her mother left the apartment before the lease termination period and was assessed a charge. She reached an agreement with the creditor and documented paying this debt in April 2020. This debt is resolved. (Tr. 41-42; AE A (See attachment), E)

SOR ¶ 1.f-\$1,043. Applicant incurred this debt when she was overpaid by the Department of Veterans Affairs (VA) because she went from being a full-time student to part time, which reduced the amount she was entitled to receive for her VA educational benefits. She documented paying the VA approximately \$3,000 in October and November 2019 to repay the debt. This debt is resolved. (Tr. 42, 45; AE A (See attachment))

SOR ¶ 1.g-\$461. Applicant incurred this debt when she was unemployed. She documented paying the debt in July 2019. This debt is resolved. (Tr. 46; AE A (See attachment))

SOR ¶ 1.h-\$402. Applicant incurred this education debt. She documented settling the debt in July 2019. This debt is resolved. (Tr. 46-47; AE A (See attachment))

SOR ¶ 1i-\$1,152. Applicant incurred this utility debt. She documented paying the debt in July 2019. This debt is resolved. (Tr. 47; AE A (See attachment))

SOR ¶ 1.j-\$228. Applicant incurred this medical debt. She documented paying this and other medical debts to the same creditor in March 2020. This debt is resolved. (Tr. 46-465-667; AE A (See attachment, related to SOR ¶ 1.s))

SOR ¶ 1.k-\$1,406. Applicant incurred this debt from her failed business. She contacted multiple creditors-collection companies trying to resolve this debt. Applicant is willing and able to pay the debt, but no company is taking ownership of it. This debt is resolved. (Tr. 47-49)

SOR ¶ 1.l-\$1,152. Applicant incurred this telecommunication debt. She documented settling the debt in January 2020. This debt is resolved. (Tr. 50; AE A (See attachment))

SOR ¶ 1.m-\$419. This debt is a duplicate if SOR ¶ 1.g, which was paid. This debt is resolved. (Tr. 50; AE A (See attachment))

SOR ¶ 1.n-\$6,950. Applicant incurred this automobile debt. She documented settling the debt in January 2020. This debt is resolved. (Tr. 51-52; AE A (See attachment))

SOR ¶ 1.o-\$3,635. This debt is a duplicate if SOR ¶ 1.n, which was paid. This debt is resolved. (Tr. 52; AE A (See attachment))

SOR ¶ 1.p-\$1,193. Applicant incurred this telecommunication debt. She contacted multiple creditors-collection companies trying to resolve this debt. Applicant is willing and able to pay the debt, but no company is taking ownership of it. (Tr. 52-53)

SOR ¶ 1.q-\$993. Applicant incurred this debt when she was unemployed. She set up a payment plan and documented completing the plan in May 2020. This debt is resolved. (Tr. 53; AE A (See attachment))

SOR ¶ 1.r-\$658. Applicant incurred this debt when she was unemployed. She documented paying this debt in August 2020. This debt is resolved. (Tr. 53; AE A (See attachment))

SOR ¶ 1.s-\$153. This medical debt was paid with the other medical debts listed in SOR ¶ 1.j in March 2020. This debt is resolved. (Tr. 54; AE A (See attachment related to SOR ¶ 1.s))

SOR ¶ 1.t-\$125. Applicant incurred this debt. She documented paying this debt in December 2019. This debt is resolved. (Tr. 54; AE A (See attachment))

Applicant credibly testified that she is in good financial shape right now. Her monthly gross income is approximately \$9,500 and she is going into a new position where her pay will increase by about \$8,000 yearly. She has not incurred any new debt and she is paying all her current bills on time. She has accumulated approximately \$25,000 in savings and also has approximately \$10,000 in a retirement plan. All of her federal and state taxes have been paid. She documented paying approximately \$10,000 in state taxes in July 2019. She paid this amount, although she believed she did not owe it due to the overseas income exclusion she is entitled to claim. (Tr. 57-61, 65; AE C)

Applicant provided a character letter from her current supervisor, an Army colonel, who has known her since July 2020. The colonel states that Applicant has daily access to classified information and he has never found a reason to question her adherence to the rules and regulations concerning contact with classified information. She is an outstanding worker who he trusts implicitly. (AE D)

Policies

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 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(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 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, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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 guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially applies:

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

Appellant had multiple delinquent debts that were unpaid or unresolved. Both of the above disqualifying conditions are raised by the evidence.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Appellant had two periods where she came under financial distress that led to some of her delinquent debts. She started a business between her contractor deployments that ultimately failed and she suffered a serious injury while deployed that caused her to miss significant time from work. She received workers' compensation for some time, but when it expired, she was unable to return to her previous position. These were circumstances beyond her control. Appellant eventually acted responsibly by entering into debt payment plans, settling and paying other debts, and even contacting creditors who disavowed the debts. She also paid a state tax debt outside of her payment plan. She has no current outstanding debts and her income is allowing her to accumulate savings. While her financial state is not perfect, perfection is not required. She has established a track record of steady payments, which have gone to pay her delinquent debts. There are clear indications that her debts are being resolved and that she is making good-faith efforts to do so. Applicant credibly disputed a debt involving her mother's terminated lease. All the above listed mitigating conditions substantially apply.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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. I considered Applicant's military service, her years of service, both military and civilian, in a deployment combat area, and the strong recommendation of her current supervisor. While Applicant could have been timelier in her resolution of her debts, she eventually paid them, except for two that could not be located.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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-1.t: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge