



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



In the matter of:)	
)	
)	ISCR Case No. 19-02027
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: William H. Henderson, Personal Representative

May 14, 2021

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On December 5, 2017, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 4.) On August 30, 2019, 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 (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 within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on March 9, 2020. (Government Exhibit 3.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on November 9, 2020. A complete copy of the File of Relevant Material (FORM), containing eight Items was received by Applicant on December 2, 2020. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a 122-page response to the FORM outside of the 30-day period. Department Counsel granted

Applicant an extension of time until January 15, 2021, to submit her FORM response, and an extension of time until February 9, 2021, to submit a four-page Supplemental FORM response. Both of Applicant's responses to the FORM were admitted into the record without objection. DOHA assigned the case to me on March 16, 2021. Hereinafter, all reference to Government Items will be referenced as Government Exhibits.

Findings of Fact

Applicant is 47 years old, and divorced. She has two children. She has a Master's degree. She holds the position of Site Operations Manager for a defense contractor. She is seeking to retain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information.

The SOR identified sixteen delinquent debts held by private creditors totaling approximately \$76,000, showing a history of financial problems. Applicant also received a written warning from her employer for misuse of her corporate credit card. Applicant admits each of the allegations set forth in the SOR under this guideline except 1.d., 1.h., 1.i., 1.j., and 1.q. Credit reports of the Applicant dated February 3, 2018; June 14, 2019; and September 21, 2020, confirm the outstanding debts. (Government Exhibits 6, 7 and 8.) Applicant began working for her current employer in 1997. She has held a security clearance for the past twenty-three years. She has never committed a security violation or infraction. She states that she has completed all required security training and complied with all procedures for safeguarding classified material.

Applicant was married to her first husband from 1998 until 2011, when they divorced. During the marriage, he was a stay-at-home Dad, taking care of the children, and she was the breadwinner, working outside of the home, providing the main financial support for the family. Applicant states that in December 2008 she and her husband separated, and she became a single parent, having sole responsibility for their two children. Following the divorce, in 2011, Applicant was unable to pay the debt because of her other financial obligations. Applicant stated that initially her divorce settlement required her to pay her husband spousal support in the amount of \$1,500 dollars a month from April 2011 to March 2016. He was supposed to pay her \$1,250 a month in child support until the children reached the age of 18 or 19. The final version of the divorce settlement changed and Applicant was required to pay her husband \$250 a month for five years, and he was not required to pay her child support. In total, Applicant paid her husband a total of \$15,000 in spousal support. Applicant also paid credit card charges made by her husband during their period of separation because he

was an authorized user on her account. All of the expenses she incurred from the separation and divorce totaled about \$100,000, including attorney's fees, mediation costs, child care expenses, home maintenance issues, and other related matters. Although the divorce decree made her ex-husband responsible for half of their credit card debt, she was concerned that he may not pay his half, (which he did not do), and so she tried to continue making payments on all of the debts until it became impossible. This exhausted all of the Applicant's financial resources. (Applicant's Response to the FORM.)

Concerned about her financial situation and her excessive delinquent debt, Applicant sought out legal advice from an attorney regarding payment of her debt. Applicant was advised not to contact her creditors regarding her debt since it was about to drop off of her credit reports, because there has been no account activity for seven years, the debts were no longer enforceable, and they would cease to affect her credit score. She relied on this advice, until she received the SOR, and then contacted a security clearance consultant for help. Upon receipt of the SOR, on November 22, 2019, Applicant took out a loan for \$30,000 that she is repaying in the amount of \$934 monthly for three years. She is using the money from the loan to pay off her delinquent creditors. (Applicant's Response to the FORM.)

1.a. For a two-year period from 2015 through 2017, Applicant used her company credit card for personal use. She explained that because of her poor credit rating she was unable to get her own personal credit card. She states that she always made timely payments as required on the company credit card and she only sought reimbursement for company and work-related expenses that she charged on the card. This activity was discovered during an audit of her company credit card account. As a result, Applicant received a written reprimand from her supervisor. She states that she accepts full responsibility for this rule violation. She states that she was motivated by the convenience of using a credit card rather than writing checks or paying with cash for personal expenses. She realizes that using her company credit card was a bad decision, and she states that she will never repeat it. Despite the written reprimand she received from her supervisor for misuse of her company credit card in November 2017, Applicant was rated as an "Excellent Performer" that year by her supervisor. (Applicant's Response to the FORM.)

Due to the separation and divorce, the following delinquent debts became owing:

1.b. A delinquent debt owed to a department store was charged off in the approximate amount of \$9,843. Applicant opened the account in 2006. After receiving the SOR, Applicant contacted the creditor and they agreed to accept \$3,937 to settle the account in full. On December 9, 2019, Applicant made a payment of \$3,937 as agreed. (Applicant's Answer to SOR and Applicant's Exhibit A.) The debt is now resolved.

1.c. A delinquent debt was placed for collection in the approximate amount of \$949. Applicant settled the debt in the amount of \$569 on November 12, 2019. (Applicant's Answer to SOR and Applicant's Exhibit B.) The debt is now resolved.

1.d. This debt is a duplicate of the debt set forth in 1.c. (Applicant's Exhibit B). Department Counsel withdrew the allegation. (FORM.)

1.e. A delinquent credit card debt was placed for collection in the approximate amount of \$20,698. This account was opened in 2007. After receiving the SOR, Applicant contacted the creditor and agreed to settle the account for \$8,200 prior to March 30, 2020. A letter dated May 19, 2020, from the creditor acknowledged receipt of the payment and settlement of the account as of April 20, 2020. The debt is now resolved. (Applicant's Answer to SOR, Response to FORM, and Exhibit N.)

1.f. A delinquent credit card debt was placed for collection in the approximate amount of \$12,914. This account was opened in 2006. After receiving the SOR, Applicant contacted the creditor and agreed to settle the account by paying \$7,103 in 12 monthly payments of \$592 each month beginning on December 31, 2019. Applicant states that she made these installment payments sooner than required. The debt is now resolved. (Applicant's Answer to SOR, Response to FORM, and Exhibit C.)

1.g. A delinquent debt was placed for collection in the approximate amount of \$5,495. The account was opened in 2010. After receiving the SOR, Applicant contacted the creditor and agreed to settle the account by paying \$3,023 in 12 monthly payments of \$252 each month beginning on December 31, 2019. Applicant states that she made these installment payments sooner than required. The debt is now resolved. (Applicant's Answer to SOR, Response to FORM, and Exhibit D.)

1.h. A delinquent debt was charged off in the approximate amount of \$2,352. Applicant denies the debt, claiming that she resolved it December 31, 2015. Applicant claims that she paid part of it but has no records to substantiate this assertion. She provided an IRS Form 1099-C Cancellation of Debt indicating that she had a debt discharged by this creditor in the amount of \$780. This debt is no longer owing. (Applicant's Answer to SOR, Response to FORM, and Exhibit E.)

1.i. A delinquent debt was placed for collection in the approximate amount of \$1,968. Applicant denies the debt, claiming she resolved it December 31, 2016. Applicant claims that she paid part of the debt, and they forgave the rest. Applicant provided an IRS Form 1099-C Cancellation of Debt indicating that she had a debt discharged by this creditor in the amount of \$1,559.95. This debt is no longer owing. (Applicant's Answer to SOR, Response to FORM, and Exhibit F.)

1.j. A delinquent department store credit card was charged off in the approximate amount of \$1,063. Applicant denies the debt, claiming that she resolved it December 31, 2016. Applicant provided an IRS Form 1099-C Cancellation of Debt indicating that she had a debt discharged by this creditor in the amount of \$741.93. This debt is no longer owing. (Applicant's Answer to SOR, Response to FORM and Exhibit G.)

1.k. A delinquent department store credit card was charged off in the approximate amount of \$593. Applicant opened the account in August 2005. On November 10, 2019, she resolved the account with a payment of \$296.57. This debt is no longer owing. (Applicant's Answer to SOR, Response to FORM, and Exhibit H.)

1.l. A delinquent debt owed to a bank was placed for collection in the approximate amount of \$10,013. Applicant claims that she paid the debt on November 25, 2019. She provided a copy of a computer screenshot showing activity on the creditor's website. It shows that a payment of some kind was made but does not specify the amount. This debt is now resolved. (Applicant's Answer to SOR, Response to FORM, and Exhibit I.)

1.m. A delinquent debt was placed for collection in the approximate amount of \$4,605. After receiving the SOR, Applicant resolved the account on November 14, 2019 and provided a letter from the creditor confirming that the balance owed is now zero. This debt is now resolved. (Applicant's Answer to SOR, Response to FORM, and Exhibit J.)

1.n. A delinquent medical debt was placed for collection in the approximate amount of \$2,798. Applicant claims that she paid the debt on November 14, 2019. She provided an email from the creditor indicating that she submitted payments of \$2,300 and \$498 toward the debt. This debt is now resolved. (Applicant's Answer to SOR, Response to FORM, and Exhibit K.)

1.o. A delinquent medical debt was placed for collection in the approximate amount of \$2,145. Applicant claims that she paid the debt on November 14, 2019, and submitted a screenshot from her bank or credit card account showing that she made a payment to a hospital in the amount of \$2,203.53 on that date. This debt is now resolved. (Applicant's Answer to SOR, Response to FORM, and Exhibit L.)

1.p. A delinquent debt was placed for collection in the approximate amount of \$616. Applicant claims that she paid the debt on December 9, 2019 and provided a letter from the creditor indicating that they would accept payment of \$431.44 to resolve the balance due if paid by December 9, 2019. A letter from the creditor showing written confirmation of the payment dated December 20, 2019. (Applicant's Answer to SOR, Response to FORM, and Exhibit M.)

1.q. A delinquent debt was placed for collection in the approximate amount of \$238. Applicant denies the debt because she has no recollection of it. She has made contact with the creditor a number of times, but has been unsuccessful in obtaining information regarding the account. (Applicant's Answer to SOR, Response to FORM, and Applicant's Exhibits O and P.)

Applicant has worked for her current employer for the past twenty-three years. She is an outstanding employee and has received a number of promotions. Her most recent promotion was in April 2019. Her current annual salary is \$179,000. She is responsible for managing 197 employees and a budget of \$100,000,000. She states

that she is now financially solvent and has the ability and intent to meet all of her financial obligations as agreed.

Letters of recommendation from professional associates, friends, and colleagues of the Applicant attest to her honesty, trustworthiness, reliability and good conduct. (Applicant's Exhibits U, V, W and X.)

Applicant's performance reviews for 2017, 2018, and 2019 are favorable. (Applicant's Exhibits Y, Z and AA.)

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 AG ¶ 2 describing 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 relating to the guideline 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Due to a separation and divorce, Applicant incurred delinquent debts that she could not afford to pay. She also misused her company credit card. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I have considered each one of them set forth below:

(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 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.

As a result of Applicant's separation and divorce, she became excessively indebted to a number of creditors and could not afford to pay her delinquent debts. To complicate matters, her ex-husband refused to pay his part of the financial obligation and she was left with all of the debt from the marriage. Applicant followed the wrong advice from her attorney by not attempting to pay her debts even after she could afford to do so. When she found out that she should resolve her delinquent debt, no matter what, and how it can adversely affect her security clearance if she does not, she worked hard to get them paid as quickly as possible. Applicant took out a \$30,000 loan and started paying her delinquent debts. She clearly understands her responsibility to resolve her debts in a timely fashion and to always live within her means. Since she received the SOR, and has become more knowledgeable about her particular situation, she has shown significant progress toward resolving her debts. In fact, Applicant has contacted each of her creditors and has either settled the debt, paid it off in full, or otherwise resolved it. The evidence shows that with some of her debts, Applicant not only made the monthly installment payments she agreed to, but completed her settlement commitment earlier than agreed. Applicant's conduct shows good judgment and a good faith effort. She has clearly demonstrated that her financial problems have been resolved, or are being resolved, and are unlikely to recur. Each of the mitigating conditions set forth above apply. Accordingly, this guideline is found for the Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has exercised sound judgment and has addressed her debts and made a good faith effort to resolve them. She is no longer excessively indebted. Applicant also misused her company credit card, for which there is no excuse. This was obviously an aberration on her part that will not be repeated. She understands the severe consequences if it is to ever happen again. Under the circumstances, considering her unblemished years of service with her employer, her outstanding letters of recommendation, her impeccable performance evaluations, as well as her numerous job promotions over the years, she has demonstrated that she can be trusted with the national secrets. Applicant is an individual with whom the Government can be confident to know she will always follow rules and regulations, and do the right thing, even when no one is looking. Applicant meets the qualifications for a security clearance.

Overall, the record evidence leaves me with no 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a.: through 1.q.: 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