



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 19-03407
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2021

Decision

MALONE, Matthew E., Administrative Judge:

Applicant accrued numerous delinquent or past-due debts due to events and circumstances beyond her control. She has acted responsibly to resolve her financial problems, which are unlikely to recur. Her request for continued access to classified information is granted.

Statement of the Case

On November 18, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew her eligibility for a security clearance required for her employment with a federal contractor and for her military reserve duties. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On January 31, 2020, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The adjudicative guidelines (AG) cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). I received the case on November 10, 2020, and convened the requested hearing on December 14, 2020. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on December 30, 2020. Applicant testified and presented Applicant Exhibits (AX) A – D. Department Counsel proffered Government Exhibits (GX) 1 – 6. With her Answer, Applicant provided documents that have been included in the record without objection. (Tr. 12 – 13)

Additionally, I left the record open after the hearing to allow Applicant to present additional relevant information. On December 21, 2020, Applicant proffered AX E – L. The record closed on December 28, 2020, when Department Counsel waived objection to admissibility of Applicant's post-hearings submissions.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$56,469 for 15 delinquent or past-due debts (SOR 1.a – 1.o). In response, Applicant admitted SOR 1.a, 1.b, 1.g, 1.h, 1.j, and 1.m. She denied the remaining allegations, and all of her responses were accompanied by explanatory remarks. (Answer) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 39 years old. She and her ex-husband were married from November 2005 until they separated in 2012. A divorce was finalized in June 2014. Applicant has two children by her ex-husband, now ages 19 and 15. Applicant's ex-husband served in the military but was involuntarily discharged before they separated, resulting in a significant loss of household income. Applicant served on active duty in the military between June 1999 and June 2014, when she was involuntarily separated from the service with an honorable discharge as part of a force manpower adjustment. (Answer; GX 1; GX 6; Tr. 7 – 8, 38, 50 – 51)

Since June 2014, Applicant has served in a military reserve unit where she drills once a month and performs two weeks on active duty annually. After she was involuntarily separated in 2014, she could not find full-time civilian employment until August 2015. Her only income consisted of her monthly reserve pay and whatever unemployment benefits she may have been receiving. Since 2015, Applicant has worked for various civilian employers. She also was unemployed between May 2017 and February 2018 after being fired; however, the record suggests that she was not terminated for misconduct, but

because she and her manager were incompatible. Since February 2018, Applicant has been steadily employed by companies doing business with the federal government. She has held a security clearance first granted while she was on active duty since at least 2009. (GX 1; GX 5; Tr. 40, 42, 52 – 56)

In Section 26 (Financial Record) of her most recent security clearance application, Applicant disclosed several delinquent or past-due debts. On March 18, 2019, she was interviewed as part of her background investigation by a government agent, who reviewed with her the contents of a credit bureau report (CBR) that reflected the debts alleged in the SOR. Applicant asserted that her financial problems stemmed from the co-occurrence of the loss of income after her ex-husband's unplanned discharge; from her divorce, which resulted in a significant loss of income and additional expenses; and from her own unplanned separation from the active duty military. She reported during the interview that she was working with a debt management company to consolidate and repay her past-due debts. (GX 5; Tr. 86)

After initially having custody of both children after her divorce, Applicant sent the older child to live with her ex-husband because she could not afford to care for both children. She also was homeless at times, relying on various friends and relatives to allow her and her child to stay with them. The debts alleged at SOR 1.a and 1.d arose when Applicant became unable to pay her rent. Another rent-related debt (SOR 1.m) is the result of fees assessed against her when she moved out of a different rental property. (Answer; GX 1; GX 2; GX 6; Tr. 38 – 39, 56)

As she stated in her March 2019 subject interview, Applicant initially worked to resolve her financial problems through a debt management company. She paid as much as \$700 each month for credit report corrections, general financial counseling, and most important, an organized repayment plan for her debts based on settlement negotiations with her creditors. By the fall of 2019, she realized that no progress was being made in paying off her debts. In December 2019, Applicant started working with her current financial counselor, who has helped Applicant establish a monthly budget on which was based a debt repayment plan that first addressed small and modest-sized debts she was able to repay quickly. In addition, Applicant and her financial counselor negotiated repayment plans for several of her larger debts starting in late 2019 and early 2020. However, in December 2019, Applicant had a car accident in which she hit a deer, rendering her car a total loss. She subsequently incurred a \$6,000 debt for the balance of her car loan that was not covered by insurance, and she had not purchased gap insurance from the dealer who sold her the car. Applicant also incurred a debt for unpaid car insurance premiums around the time of the accident. Neither debt was alleged in the SOR, but Department Counsel introduced information about the debts that is relevant to an examination of Applicant's actions in response to financial problems. Applicant has resolved the insurance debt and she is making \$160 monthly payments to resolve the car loan balance due. (Answer; GX 2; GX 6; AX A; AX I; AX J; Tr. 72, 102 - 105)

In response to the Government's information, Applicant showed she has paid or otherwise resolved the debts at SOR 1.d – 1.f, 1.j, 1.k, 1.l, and 1.o. She also is making monthly payments or has established a payment plan to resolve the debts alleged at SOR 1.i and 1.n. As to SOR 1.h, available information shows it is a duplicate of the debt alleged at SOR 1.i. This duplication resulted with the transfer of the debt from one collection agency to another. Applicant first incurred this debt when she took out a loan to pay for the legal fees from her divorce. (Answer; GX 2; GX 4; AX B; AX C; AX D; AX F; AX G; AX H; AX K; AX L; Tr. 43 – 45, 73 – 80, 88 – 90)

The \$12,904 debt at SOR 1.a arose when Applicant was evicted from an apartment for non-payment of rent in August 2015. Applicant disputes the alleged amount due, claiming she only was obligated to pay about \$2,400, with the remainder consisting of fees and interest charged by collection agencies. Applicant testified that starting in 2019, she paid about \$100 each month but had to stop after her car accident. In May 2020, Applicant resumed monthly payments but stopped because of her dispute over the balance due. (Answer; Tr. 15, 42 – 43, 58 – 67, 111)

SOR 1.b alleges a debt that remains from a car loan obtained in 2012, when Applicant was still married and both she and her ex-husband were still on active duty. Applicant last made a payment on this account in March 2014. She has not taken further action to resolve this obligation, choosing instead to prioritize other, more recent and resolvable debts. (Answer; GX 2; Tr. 67 – 72)

Applicant also disputed that she owes the debt at SOR 1.c, which arose from alleged failure to return cable television equipment in 2015. Applicant testified that she returned the equipment in 2015 to resolve this debt, but she has no receipt or other way to corroborate her claim. Instead, she relies on the fact that the debt has not appeared on any credit reports after September 2019. (Answer; GX 2 – 4; GX 6; Tr. 72 – 73)

The \$16,595 debt alleged at SOR 1.g also was incurred during Applicant's marriage. After her ex-husband was discharged and the couple lost a significant part of their income, Applicant obtained a credit union loan to consolidate their bills. However, she was unable to stay current on the loan payments and it was charged off in February 2013. She has not yet taken any action to resolve this debt. (Answer; GX 2; GX 5; Tr. 85 – 87)

The \$3,991 debt alleged at SOR 1.m represents charges for repairs and damage from an apartment where Applicant lived in 2015. Applicant claims she only owes about \$800. A repayment plan in 2019 was unsuccessful because of the car accident discussed earlier. Applicant intends to re-establish a payment plan after the debt at SOR 1.i and the debt resulting from her car accident are paid off. (Answer; GX 1 – 3; AX I; Tr. 96 – 97, 111 – 112)

Applicant and her financial counselor have established an organized plan to pay down Applicant's debts. The plan is incorporated into a monthly budget that will reallocate

money to SOR 1.a, 1.b, and 1.g that is currently assigned to pay the debts at SOR 1.i, 1.j, and 1.n, as well as the aforementioned \$6,000 balance due after her car accident. Applicant's income is sufficient to pay these debts; however, she has less than \$200 remaining each month. Applicant's plan also considers, but does not rely on, a future income increase from a pending job offer that would result in a net monthly cash flow of about \$1,500. (Answer; AX A; AX E; AX I; AX J; Tr. 36, 48, 71, 100 – 110, 112 – 114)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her 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. (See Egan; AG ¶ 2(b))

Analysis

Financial Considerations

The Government established that Applicant incurred numerous delinquent or past-due debts between about 2013 and 2019. As of the close of the background investigation, most of those debts had not been paid or otherwise resolved. This information reasonably raises a security concern about Applicant's finances that is articulated, in relevant part, at 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

In response to the Government's information, Applicant established that her debts arose from the combined effects of her 2014 divorce after two years of separation, her ex-husband's unplanned discharge from active duty before 2012, and her own unexpected separation from active duty in 2014. After finding consistent employment almost four years later, Applicant started to address her debts through a debt management company; however, she did not see results in that effort and, since late 2019, she has been working with a financial counselor who has helped Applicant establish an organized, budget-conscious plan to pay down her debts. Although much of Applicant's effort to resolve her debts has occurred at or after the SOR date, it is also clear that she first tried to address her debts well before the SOR as she finally found steady work. Unfortunately, her initial efforts were hindered by an ineffective debt management company. She also was delayed in late 2019, when her car was totaled and she incurred additional debt (not alleged in the SOR), which she has addressed in a timely fashion. Applicant has resolved or now is repaying most of her debts, and she has a plan to address the remaining larger debts. She meets all of her current obligations in addition to repaying her past-due debts. All of the foregoing supports application of the following AG ¶ 20 mitigating conditions:

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems are not the result of poor financial judgment or other misconduct. She has acted responsibly given the circumstances in which she found herself, and it is likely she will resolve her remaining debts. The security concerns under this guideline are mitigated. I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). In addition to Applicant's military service of more than 20 years, her efforts to resolve her debts despite limited resources and unforeseen events, speaks well of her judgment and reliability. A fair and commonsense assessment of all of the record as a whole shows the concerns raised in the SOR are mitigated.

Formal Findings

Formal findings 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.o:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge