



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



In the matter of:)	
)	
)	ISCR Case No. 20-00981
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric C. Price, Esq., Department Counsel
 For Applicant: *Pro se*
 05/05/2021

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance. The delinquent accounts alleged in the SOR are not evidence of a history of financial problems, but a short-term strategic default advised by Applicant’s legal counsel in the execution of a debt-repayment plan. Since March 2018, Applicant has complied with the terms of the repayment plan negotiated by her lawyers, paying over \$8,000 toward her delinquent accounts. Clearance is granted.

Statement of the Case

On June 18, 2020, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, implemented on June 8, 2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

Applicant answered the SOR, admitted all of the allegations, and requested a decision without a hearing. (Government Exhibit (GE) 2.) The Government submitted its written case on December 18, 2020. The Government provided Applicant a complete copy of the file of relevant material (FORM) and the Directive. She acknowledged receipt of the documents on February 5, 2021. She responded, attaching additional information regarding the alleged debts. The attachments to the FORM are admitted to the record as GE 1 through 6. Applicant's FORM response and attachments are admitted as Applicant's Exhibits (AE) A through F.

Findings of Fact

Applicant, 55, has worked for her employer, a federal contracting company, since April 2018. She was previously granted access to classified information in approximately 1991, but it is unclear if she has held a clearance continuously since then. Applicant completed her most recent security clearance application in June 2017 and did not disclose any derogatory information. A July 2017 credit report showed only one delinquent debt for a time-share property. The other accounts reported were in good standing. A later credit report, dated August 2019, showed that Applicant owed \$49,875 on five delinquent accounts, which are alleged in the SOR. (GE 3, GE 5 - 6)

At the time Applicant completed the June 2017 security clearance application, she was employed by another federal contracting company where she worked for the previous two years. In November 2017, she learned that her employer did not win the bid to renew the contract on which she had been working. Concerned about the potential loss of employment, Applicant began looking for ways to reduce her high-interest-rate consumer-credit accounts. At the time, all of her consumer-credit accounts and her mortgage were current. She did not have a history of delinquent debt. Although she described her finances as stable, she began talking to a law firm that specialized in debt-repayment assistance. (GE 2-3; AE A)

Applicant was laid off on February 28, 2018. The next day, she retained a law firm to help her negotiate payment plans on six accounts, including those alleged in SOR ¶¶ 1.a through 1.d. Under the terms of the 36-month agreement with the law firm, Applicant agreed to make monthly payments of \$329 to the law firm, which then agreed to disburse the funds to the creditors, less its retainer. Because the accounts were in good standing when Applicant enrolled in the program, the law firm advised her to strategically default on the accounts to improve the law firm's negotiating position. Applicant has acted in compliance with the terms of this agreement, paying over \$13,000 to the law firm between March 2018 and February 2021 toward the resolution of the accounts in the repayment plan and in fees to the law firm. (GE 2, 5; AE A)

To date, the law firm has helped Applicant achieve favorable results on the debts alleged in SOR ¶¶ 1.a – 1.d. The creditor holding the accounts alleged in SOR ¶¶ 1.a (\$5,964) and 1.b (\$4,769) filed a civil action against Applicant to obtain a judgment on both accounts. The law firm entered consent judgments on Applicant's behalf in December 2018 and in May 2019 for SOR ¶¶ 1.a and 1.b, respectively. Under the terms of each order, Applicant has agreed to make monthly payments on each account over

the next four years. She has complied, paying \$4,703 on SOR ¶ 1.a and \$2,268 on SOR ¶ 1.b. The terms of the consent order are set to continue after Applicant's contract with the law firm ended in March 2021. Beginning in April 2021, Applicant will make the monthly payments directly to the creditor. She resolved SOR ¶1.c (\$2,368) in August 2020, as she promised in her answer to the SOR. She also included in her SOR answer the payment receipt for SOR ¶ 1.d (\$588). (GE 2; AE A, C, E -F)

The debt alleged in SOR ¶ 1.e (\$36,204) is for a time-share property Applicant owed jointly with her husband, who was the primary debtor. The couple purchased the property in 2014. Believing that the creditor engaged in fraudulent practices to originate the loan, the couple refused to continue making payments on the obligation in January 2015. The creditor cancelled the debt and issued an IRS Form 1099-C for the 2015 tax year. (GE 2; AE G)

Applicant describes her current finances as steady. She reports that all of her consumer-credit accounts and her mortgage are in good standing. She has not opened any new consumer-credit accounts. The credit reports in the record show that until March 2018, she had a long and favorable credit history. (GE 5 – 6; AE A, D)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(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 the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 clearance decision.

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

Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.” (AG ¶ 18). The SOR alleged and Applicant admitted that she owed \$49,875 on five delinquent accounts. The record supports a finding that AG ¶ 19(c), “a history of not meeting financial obligations,” applies.

The Applicant has presented sufficient evidence to mitigate the alleged concerns. Specifically, the following mitigating conditions apply:

AG ¶ 20(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;

AG ¶ 20(b) the conditions that resulted in the financial problems 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;

AG ¶ 20(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 under control; and,

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has a long and favorable credit history. In anticipation of a foreseeable loss of employment due to events beyond her control, Applicant began making a plan for the repayment of her consumer-credit accounts. Immediately after losing her job, she retained a law firm specializing in debt repayment. She has since followed the advice of her counsel and complied with the repayment terms the law firm negotiated on her behalf.

To date, Applicant has resolved or is resolving each of the SOR debts. She has paid over \$8,000 toward her outstanding debts, complying with the consent orders of the debts alleged in SOR ¶¶ 1.a and 1.b, and settling the debts alleged in SOR ¶¶ 1.c

and 1.d. The debt alleged in SOR ¶ 1.e has been cancelled by the creditor. Applicant's actions are not an indication of financial irresponsibility, but actions taken in accordance to a strategic debt repayment plan. Applicant's financial problems are under control.

Based on the record, Applicant has mitigated the concerns raised in the SOR by her financial problems. She has established that she is a suitable candidate for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). An applicant is not required to be debt free. She must establish that she has a plan for resolving her delinquent debt and demonstrate that she has acted in accordance to that plan. Applicant has done so. She demonstrated a proactive approach toward her finances, securing professional help before she experienced financial problems. She does not have a history of financial problems; she incurred delinquent debt for a short period for a specific purpose as advised by her attorneys. She has demonstrated a favorable and consistent history of debt repayment. Her current credit reports show no indications of ongoing problems.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant

Conclusion

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge