



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



In the matter of:)
)
) ISCR Case No. 20-03540
)
 Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2021

Decision

BENSON, Pamela C., Administrative Judge:

Applicant had numerous delinquent medical debts that developed due to circumstances beyond her control. Bankruptcy is a legally authorized means for resolving delinquent debt. Her debts were discharged through bankruptcy and future financial problems are unlikely to recur. The financial considerations security concerns were mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 26, 2019, Applicant submitted a security clearance application (SCA). On December 29, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued to 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 (AG) effective within the DOD on June 8, 2017.

Applicant provided an undated response to the SOR, and she requested a hearing. On April 7, 2021, the case was assigned to me. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 19, 2021.

Applicant's hearing was conducted through the Defense Collaboration Services (DCS) video-teleconferencing system and was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant offered two exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 13-18; Government Exhibits (GE) 1-5; Applicant Exhibits (AE) A and B). I held the record open until August 2, 2021, in the event either party wanted to provide additional documentation. On July 28, 2021, DOHA received the hearing transcript. On August 2, 2021, Applicant provided three character reference letters, labeled as AE C, D, and E, and the exhibits were admitted without objection. The record closed on August 2, 2021.

Procedural Matters

Before the hearing, Department Counsel moved to amend the SOR to add SOR ¶ 1.s:

“1.s. In or around December 2020, you filed Chapter 7 Bankruptcy. In or around March 2021, your dischargeable debts were discharged.”

On April 21, 2021, Applicant admitted the allegation. The Chapter 7 bankruptcy documentation, to include the petition and the U.S. Bankruptcy Court's discharge of debtor, is in the record.

Findings of Fact

In Applicant's SOR response, she admitted the five student loans referred for collection (in SOR ¶¶ 1.b-1.d and 1.i, and 1.o). Applicant denied the remaining 13 delinquent medical accounts, claiming that these debts had been discharged through bankruptcy. Her admissions are accepted as a finding of fact.

Applicant is 30 years old. She served in the Army National Guard from January 2009 until January 2015, at which time she received an honorable discharge. During her service, she held a DOD security clearance. In April 2016, she earned an associate's degree. She currently resides with a cohabitant and her daughter, age 6. She is employed as a massage therapist earning about \$2,500 a month. She has been offered a position with a DOD contractor as an imagery analyst, but her employment is contingent upon her obtaining a DOD security clearance. (Tr. 19-20, 29, 37-38; GE 1)

Financial Considerations

Applicant attributed her financial delinquencies to various medical issues and an unexpected hospitalization while without medical insurance. In January 2015, she suffered from a gallbladder attack while drilling for the Army National Guard. She was taken to the hospital and her gallbladder was removed. Although she believed she was covered by Tricare insurance, she later discovered that her Tricare medical coverage was denied. She did not challenge the Tricare denial of coverage and she was held personally

responsible for the medical debt totaling approximately \$36,000. Between 2012 and 2018, she incurred additional medical debts totaling approximately \$14,000 while uninsured. In November 2020, a lawsuit was filed against her to recover the \$36,000 in unpaid medical expenses related to her gallbladder surgery. Shortly thereafter, Applicant filed for Chapter 7 bankruptcy protection, listing approximately \$50,000 in medical debt and \$13,000 in delinquent student loans. Her March 2021 bankruptcy discharge included all of her medical debt. Her student loans are currently in forbearance until September 2021, due to the Covid-19 pandemic. Applicant testified that her car loan will be paid in full in September 2021, and it is her intention to use the extra \$260 to start paying on her student loans thereafter. (Tr. 12, 21-23, 25, 28, 38-41; AE A, AE B)

Applicant completed the financial counseling required by her bankruptcy filing in December 2020. She learned from the counseling that she needed to monitor her spending habits and create a practical monthly budget. She is in the process of rebuilding her savings account. The father of her daughter provides \$400 in monthly support. She has filed all Federal and state income tax returns. (Tr. 30-31, 35-37)

Applicant provided three character reference letters from friends, who described her as dedicated, trustworthy, and a person of integrity. Her friends assert that she would be a valuable asset to any organization or employer. (AE C, AE D, AE E)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in

satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts" and "(c) a history of not meeting financial obligations." Applicant's five delinquent student loans and 13 delinquent medical accounts prompted her to file for Chapter 7 bankruptcy protection. AG ¶¶ 19(a) and 19(c) apply.

Three financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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; and

(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.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

Applicant's financial problems resulted from periods of underemployment and unexpected serious medical issues that required medical treatment without the benefit of medical insurance. These circumstances are largely beyond her control. It is important to note that the SOR debts did not include unpaid consumer accounts due to Applicant living beyond her means. She is a military service member and suffered from a gallbladder

attack while on a weekend drill. Applicant sought legal advice due to a pending lawsuit and overwhelming medical debt. Applicant's bankruptcy attorney recommended that she seek a fresh financial start by filing Chapter 7 Bankruptcy. Resolution of debts through bankruptcy is a legally authorized means for resolving delinquent debt. The U.S. Bankruptcy Court website states:

A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision: "[I]t gives to the honest but unfortunate debtor ... a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). This goal is accomplished through the bankruptcy discharge, which releases debtors from personal liability from specific debts and prohibits creditors from ever taking any action against the debtor to collect those debts.

In March 2021, the bankruptcy court discharged Applicant's nonpriority unsecured debts, which included all of her delinquent medical accounts alleged in the SOR. The five student loans are currently in forbearance until September 2021. It is her intention to start paying on her student loans in October 2021 after she makes her last car payment in September 2021. All of the delinquent medical accounts alleged in the SOR are resolved and there are clear indications that her finances are under control. Applicant has acted responsibly under the circumstances, and future financial problems are unlikely to recur. AG ¶¶ 20(a), 20(b), and 20(c) are established, and financial considerations security concerns are 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 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are

incorporated 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 30-year-old massage therapist with an employment offer from a DOD contractor that is contingent on her obtaining a DOD security clearance. Her unforeseen medical issues and periods of underemployment are circumstances beyond Applicant's control that adversely affected her finances. Resolution of debts through bankruptcy is a legally authorized means for resolving delinquent debt. In March 2021, the bankruptcy court discharged all of her delinquent nonpriority unsecured debts under Chapter 7 of the Bankruptcy Code.

Applicant took affirmative action to resolve her financial delinquencies and her financial issues are currently under control. Her conduct shows financial responsibility and good judgment. I find that future delinquencies are unlikely to recur. After evaluating all the evidence in the context of the whole person, 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.s:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge