



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 20-00078
)	
)	
Applicant for Security Clearance)	

Appearances

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

10/15/2021

Decision

HOGAN, Erin C., Administrative Judge:

On May 10, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct, and Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On May 19, 2020, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to another administrative judge on January 5, 2021. The case was transferred to me on April 29, 2021. A Notice of Hearing was issued on June 4, 2021, scheduling the hearing via the Defense Collaboration Services (DCS) video teleconference system on June 16, 2021. The hearing was continued because of technical issues. On July 19, 2021, a Notice of Hearing was issued, scheduling the hearing on August 17, 2021. The hearing was held as scheduled. During the hearing, the Government offered 11 exhibits, which were admitted as Government Exhibits (Gov) 1 – 11. Applicant testified. The transcript (Tr.)

was received on August 26, 2021. The record was held open until September 20, 2021, to allow Applicant to submit additional documents. Applicant timely submitted three documents, which were admitted without objection as AE A; AE B; and AE C. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 51-year-old employee of a Department of Defense contractor seeking a security clearance. She has worked full-time since January 2016. She endured periods of unemployment between July 2014 and January 2016. She estimates she was unemployed for a total of one year during this period. Applicant's highest level of education is a bachelor's degree. She also earned credits towards an MBA, but did not complete the program. She is single and has a 28-year-old son who lives with her. (Tr. 27-30; Gov 1)

Guideline F, Financial Considerations:

On July 13, 2018, Applicant submitted a security clearance questionnaire. A subsequent security clearance background investigation revealed Applicant had the following delinquent debts: a \$17,764 charged-off debt as a result of a voluntary car repossession (SOR ¶ 1.a: Tr. 11-16; Gov 2 at 5; Gov 3 at 4; Gov 4 at 1; Gov 5 at 4); a \$100 delinquent medical account owed to an unidentified medical creditor (SOR ¶ 1.b: Tr. 16-17; Gov 4 at 2); a \$221 delinquent medical account (SOR ¶ 1.c: Tr. 17-19; Gov 5 at 3); and it is alleged Applicant filed for bankruptcy under Chapter 7 in May 2005. Applicant's dischargeable debts were discharged in July 2005. (SOR ¶ 1.d: Tr. 20-21; Gov 6).

Applicant testified that she is currently more financially stable. She understands the importance of paying her bills on time. She has a much better paying job. She previously struggled financially. She would pay her debts based on priority. She is current on all of her credit card accounts. She has a budget and does not exceed her living expenses. (Tr. 24-25)

The status of the debts alleged in the SOR are:

SOR ¶ 1.a: \$17,764 charged-off automobile repossession debt: Applicant purchased and took out a car loan in 2012. She returned the car in July 2017 because she was having difficulty making payments, partially due to her periods of unemployment. The car also needed repairs. Before surrendering the car, Applicant tried to re-negotiate the terms of the car loan. She was not eligible for refinancing based on her credit history. A financial counselor advised her to voluntarily surrender the car. She was unaware that she still owed money after the car loan was charged off. She assumed it would only affect her credit rating. She admits to receiving some letters regarding the car after returning the car to the dealer. Applicant testified that if she had to do it over, she would have paid more attention to interest rates and communicate

more with the creditor. The debt remains unresolved at the close of the record. (Tr. 11-16, 33-40; AE B at 31)

SOR ¶ 1.b: \$100 delinquent medical debt: Applicant is not sure what this debt is. She believes it was a debt owed to a medical laboratory. She believes she paid the debt and the debt is no longer alleged in her credit report. The debt is resolved. (Tr. 16-17, 48; Gov 1-4; AE B)

SOR ¶ 1.c: \$221 delinquent medical account: Applicant believes this debt is related to an annual medical screening. The medical office performed an additional procedure without her authorization. She disputed the amount that she was charged for the additional procedure. She decided to resolve the account on August 20, 2021. The debt is resolved. (Tr. 17-19 48-51; AE A at 1-4)

SOR ¶ 1.d: Chapter 7 discharge in 2005: Applicant purchased a home in 2005 without understanding the responsibilities of owning a home. She could not afford the mortgage payments and the home went into foreclosure. Her home was eventually foreclosed. She does not believe there was a deficiency judgment. Her dischargeable debts were discharged. (Tr. 20-21, 51-53; Gov 6)

As a single mother, Applicant struggled to pay her bills. Her financial situation has improved with her current job. She resolved many accounts over the years. She does not live above her means. She has \$8,000 in savings. She purchased her current car, a 2014 model, in 2017 for \$15,000. Two weeks ago, the car's engine broke down, resulting in a \$5,650 repair bill. Applicant refinanced the car so she could afford the car repairs. The balance owed before the refinance was \$11,800. After refinancing, the balance on her auto loan is \$17,500. Early in her ownership, she missed two payments, but was able to catch up on the payments. She set up an electronic payment plan and her car payments are current. (Tr, 27; 41-44)

Applicant is current on her state and federal taxes. (Tr. 27) She also has a \$25,000 student loan, which is currently suspended as a result of the pandemic. (Tr. 46)

Guideline E, Personal Conduct:

Under Personal Conduct, the allegations consist of Applicant's five charges of Driving while on a Suspended License. Specifically, the charges include an offense on June 2016 (SOR ¶ 2.a: Gov 7 at 1); an offense on March 2015 (SOR ¶ 2.b: Gov 8); an offense in August 2011 (SOR ¶ 2.c: Gov 9); an offense in December 2010 (SOR ¶ 2.d: Gov 10); and an offense in September 2008 (SOR ¶ 2.e: Gov 11).

Applicant states that her license was suspended each time for failing to pay traffic tickets. She admits that she neglected to pay the traffic tickets. Most of the suspensions related to her failure to pay speeding tickets, but one suspension was because her car insurance policy had expired. Applicant has not had a traffic violation or

license suspension since June 2016. She now understands the importance of paying her bills on time. She intends to make sure this never happens again. (Tr. 21-24, 54-61)

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 useful 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 access 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 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).

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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

Applicant has a long history of financial problems. The SOR alleges a Chapter 7 bankruptcy in May 2005, two delinquent medical accounts, and a charged-off debt related to a voluntary car repossession. AG ¶¶ 19(a) and 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's case:

(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

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

AG ¶ 20(b) partially applies. Applicant suffered several periods of unemployment between July 2014 and January 2016, totaling approximately one year. As a single mother, she struggled with her finances. Applicant is more mature and has taken responsibility for her debts. She resolved the two medical accounts. The remaining delinquent account is the charged-off car loan. It is likely Applicant will attempt to resolve this account in the future if she is able. She recently suffered another setback when her current car broke down resulting in significant repairs. While I considered her recent automobile repair expenses, I must give AG ¶ 20(b) less weight because she has not attempted to resolve the outstanding automobile repossession debt.

AG ¶ 20(d) applies. Applicant made a good-faith effort to resolve her delinquent debts. Applicant resolved other debts well before the SOR was issued. She currently lives within her means. She is making every effort that is within her control to resolve her accounts.

Applicant mitigated the security concerns raised under Financial Considerations.

Guideline E – Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security or adjudicative processes.

The following disqualifying condition potentially applies to Applicant's case:

AG ¶ 16(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

AG ¶ 16(d)(3) applies with regard to Applicant's pattern of rule violations. Between September 2008 and June 2016, she was charged on five occasions with Driving on a Suspended License. Concerns are raised about a person who has numerous traffic violations because it indicates an unwillingness to follow rules and regulations. In turn, this raises questions about whether the person will be capable of following the guidelines for handling and protecting classified information.

Under Guideline E, the following mitigating condition applies in Applicant's case:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant has not had a traffic violation in over five years. She admits she neglected paying her speeding tickets in the past, but has learned her lesson. All of the violations have been resolved. Applicant mitigated the concerns raised under the personal conduct concern.

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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's financial struggles as a single mother as well as her period of unemployment. Her financial decisions in the past resulted in a Chapter 7 bankruptcy in 2005. She continued to struggle financially for several years. She addressed the delinquent debts that she was able to resolve. While Applicant's financial situation is not perfect, she has taken steps to improve her financial situation. I considered Applicant's history of being charged with Driving While on a Suspended License on five occasions between September 2008 and June 2016. Applicant admits her mistakes and has taken steps to improve her conduct. She has not committed a traffic offense in over five years. Applicant has become more responsible over the past few years. For these reasons, security concerns raised under the Financial Considerations and Personal Conduct Guidelines are mitigated.

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.d:	For Applicant
Subparagraph 1.w:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge