



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
)	ISCR Case No. 20-00795
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Brett J. O’Brien, Esq.

08/05/2021

Decision

MASON, Paul J., Administrative Judge:

After retiring from the US Army in September 2013, Applicant, attended a job fair in November 2013 sponsored by primarily defense-cleared contractors. Unemployed and using credit cards to pay expenses, she accepted a job as an agent to purchase a specific car for a car-firm (firm), and then immediately sell the same car to the firm, which was actually a criminal enterprise that sold and transported these cars to overseas buyers. The principal of the business was eventually convicted of fraud and sentenced. Though she found a job in 2014, following nine months of unemployment, she was unable to catch up on her mortgage before foreclosure and sale of her home in June 2017. After enrolling in a credit counseling and debt consolidation service plan in 2015, she successfully paid off several unlisted debts by 2018; she also repaid a government student loan in late 2020. Eligibility for security clearance access is granted.

Statement of the Case

On April 30, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On August 14 and August 24, 2018, she provided personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM). The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR) dated June 12, 2020, detailing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective within the DOD on June 8, 2017.

Applicant's notarized answer to the SOR is dated September 11, 2020. (AE 1) The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 11, 2020, for a hearing on January 12, 2021. The hearing was held as scheduled. (AE 1)

At the hearing, the Government's four exhibits (GE) 1-4, and Applicant's three exhibits (AE 1-3) were entered into evidence without objection. On February 16, 2021, Applicant's post-hearing exhibits (AE 4-10) were admitted into evidence without objection. The transcript was received on January 27, 2021. The record closed on February 16, 2021.

Findings of Fact

The SOR alleges three debts, a foreclosed mortgage (§ 1.a), a charged off car loan (§ 1.b), and a Veteran's Affairs (VA) education loan (§ 1.c). Applicant essentially admitted SOR §§ 1.a and 1.c, but denied SOR § 1.b because she was deceived by the representations of the car-firm (firm) and had no intention of defrauding anyone. (AE 1)

Applicant is 39 years old and has been employed as a cybersecurity engineer with a defense contractor since July 2019. Her previous employment since 2015 was in various areas of cybersecurity. (AE 1F) She earned about half the credits needed for a bachelor's degree. (GE 1 at 12; Tr. 89)

Applicant's first marriage ended in divorce in January 2005. She remarried in August 2007. She has two daughters whose ages are 18 and 11. She served in the US Army from February 2001 to the date of her honorable discharge in September 2013. She has held a security clearance since May 2001. She had her security clearance favorably reviewed three times, in 2001, 2004, and 2012. She has always fully disclosed adverse information (SOR §§ 1.a, 1.b, and 1.c) and has had no security violations in

previous and current investigations of her security clearance. Applicant seeks a security clearance. (GE 1 at 18-39; Tr. 47-48; AE 2B at 8)

SOR ¶ 1.a – This is a mortgage that Applicant opened when she purchased her home in 2008. The monthly mortgage payment was \$2,350 a month. When she was discharged from the Army in September 2013, she was unemployed for nine months before finding work in June 2014 as a cashier at a sporting goods company. She has had uninterrupted full-time employment since then. (GE 1 at 10; Tr. 90; AE 1F)

During her nine-month period of unemployment, Applicant's husband was unemployed for a couple of months during the period too. Nevertheless, she continued to pay her monthly mortgage with savings, while accumulating additional delinquent debt on her credit cards before and during the above time span. She made her last mortgage payment in May 2014. Subsequently, she offered partial payments, but the lender wanted the entire mortgage payment or nothing. She continued to live on the property until June 2017 without making any payments. (Tr. 91-93; AE 2B at 6-8)

During the three-year period that Applicant did not pay the mortgage, she did not save the money used to pay the mortgage either. Instead, she used the money for other bills. She enrolled in a debt consolidation service and received financial counseling. She started a repayment plan with the service in 2015, successfully repaying about \$8,200 of delinquent debt in June 2018. Applicant was evicted between April and July 2017 and the house was sold after foreclosure. (AE 3H, 3H1) She kept her supervisors and security officials aware of the foreclosure and sale of the home, and the car investigation (SOR ¶ 1b). (GE 1 at 44; Tr. 52-53, 91-93)

The documents and credit reports initially show the foreclosure, the 2017 sale of the home, and deficiency balance of \$85,382 appearing in SOR ¶ 1.a. Applicant's 2020 credit reports show "foreclosure redeemed," with no outstanding balance due. No additional information appears in the credit reports. (AE 2B at 6-8; AE 3C at 33-34, 53; AE 3D)

SOR ¶ 1.b – This is an installment car loan account that was opened in November 2013 when Applicant, who had been hired by the firm to purchase and sell cars, purchased a specific car from a dealership at the firm's direction, and sold it the next day to the firm. The installment account became delinquent in August 2014, with a posted past-due amount of \$58,284, following a 71-month account review. In December 2019, the account was designated as charged off. (GE 3 at 2) In October 2020, the account was still designated as charged off following an 80-month account review. A past-due amount of \$0 dollars was posted. In November 2020, the lender notified Applicant that the delinquent debt was cancelled and they would not attempt to collect on the debt. No additional information appears in the credit reports. (GE 2 at 3; AE 2A at 3; AE 3E at 1)

The factual background of SOR ¶ 1b is as follows: Because Applicant could not reenlist, she retired from the Army in September 2013. Between June and the middle of November 2013, she attended job fairs and interviews in search of full-time defense contract employment. However, her job search was hampered by the Federal Government shutdown in October 2013, causing defense contractors to immediately suspend hiring. Applicant had two defense contractors willing to hire her, but could not because of the shutdown. (Tr. 68, 115)

Before a job fair in November 2013, Applicant received an email from the firm to interview for a job. At the interview, she recalled signing documents akin to an employment application. However, she was unable to produce those documents. She did submit a job flyer from the firm, but there is no indication this flyer was in use when Applicant was employed by the firm. Under the agreement she made with the firm, which was not in writing, her job was to purchase a car for the firm from a pre-arranged dealership and then immediately sell the car to the firm the next day, shortly after the November 2013 holiday. The firm was responsible to pay the lender in installments described in the finance charge documentation appearing with the bill of sale. After signing the bill of sale as the selling agent and receiving \$600 in pay from the firm, Applicant believed she had no further financial obligations related to the car or future jobs with the firm. A week later she thought she had been hired for full-time employment and was waiting on a start date. (Tr. 31, 55, 57-59, 67-68, 72-76, 96-103, 115) *See also* AE 1C, 1E at 2-3, 7; AE 5T at 251-253.

Applicant recalled asking questions by the firm's personnel at the interview and afterward, but always received answers that relieved her suspicions about the arrangement to purchase and sell the car. She talked with her husband and a friend. They considered the purchasing agreement was odd, but they did not believe she should cancel the agreement altogether. Thinking that the firm was a legitimate business because they were participating at the job fair with numerous reputable defense contractors, Applicant did not believe a background check was necessary. She did not question why the firm wanted her to purchase a car from a dealership, then immediately sell the car to the firm at the same price that she purchased the car from the dealership. (Tr. 72, 97-99)

Applicant had no further contact with the firm or the lender identified in the bill of sale until August 2014, when the lender notified her that she had missed a monthly installment payment for the car. Though she did not dispute the car debt with the lender or credit agencies, she put the lender in touch with law enforcement. She also tried to contact the firm without success. In September 2014, she was contacted by another potential victim of the car scheme (this person became the victims' group leader) and learned that there were 73 individuals who had been victimized by the firm in the same manner as Applicant. The firm's primary objective in the scheme was to have the victims like Applicant sign the bill of sale. The firm would make payments to the lender until they found an overseas buyer. Then they stopped payments and had the car transported to the overseas buyer. Even though she viewed her signature on the bill of

sale as ending her financial liability, because her name continued to appear on the bill of sale, she essentially became a guarantor for the installment loan, making her potentially liable to the lender when the firm defaulted on the contract. (Tr. 53, 57-60, 79-80, 102, 104-105; AE 3I at paragraph 6; AE 1D at 1-3; AE 4A at 11)

The victims' group leader increased his contact with the local police authorities in late 2014. Over the next few years, several conversations, by email and face-to-face, were held between the group leader, the victims, the lenders of the installment loans, and detectives of the local police department. The victims also communicated among themselves by email and phone about the best course of legal action against the car firm. From 2014 to 2018, Applicant kept in constant contact by email with the other victims and the victims' group leader. (AE 4A-AE 9A) They decided to allow law enforcement handle the matter rather than file a civil action that would be expensive. (Tr. 59; AE 1D at 1-3; AE 4L at 39-40; AE 6K at 332; AE 7B at 399)

In June 2018, Applicant learned by email that the chief executive officer of the firm was found guilty of fraud and sentenced to four years imprisonment and five years parole. The other co-defendants were prosecuted as well. (Tr. 67; AE 9A at 417-418; AE 9A at 432)

SOR ¶ 1.c – In her April 2018 e-QIP, Applicant stated that she was indebted for an education loan to the Veteran Affairs (VA) for classes she began taking in April 2017. She believed that her imminent foreclosure (SOR ¶ 1.a) contributed to her dropping out of classes. In June 2017, when the loan became delinquent, she was notified that she would have to repay the loan because she did not maintain a "C" average. The reason for the delay in repayment was that she could not find the proper contact at VA to begin a repayment plan. Before she made payments in late 2020 on the loan, she believes her 2018 Federal tax refund was seized as partial payment of the loan account. Documentation indicates that she made the balance of payments due on the loan between October and December 2020. (GE 1 at 46-47; GE 4 at 7; Tr. 106, 109-112; AE 2B at 8; AE 3A, 3C)

As a result of the purchase and sale of the car, and the foreclosure and sale of her home in 2017, Applicant credibly testified that she has become much more vigilant in monitoring her debt and more resistant to making purchases on credit that ultimately increase her debt. She and her husband realize that the family will have to reduce the extracurricular activities in which they participate while budgeting for sending their oldest daughter to college in the fall. Applicant is trying to save money and continue to live within her means. Applicant has no other delinquent debts and up-to-date on her taxes. (Tr. 82-84, 87-88, 107-108)

Character Evidence

When her oldest daughter joined a youth organization for girls and young women in 2009, Applicant began her volunteer work with that organization and became

very active at all management levels. She started as a troop leader and moved up in responsibility to the service unit level. Then she became service unit cookie manager and full product sales manager. Next, she became a service unit registrar to expand the organization's membership. As a day camp coordinator, Applicant was an archery instructor. When her daughter aged out of the young women's organization in 2018, Applicant ceased her affiliation with the organization and turned her attention to her daughter's extracurricular high school activities. (Tr. 85-87)

A program manager for Applicant's employer testified by phone that he has known her for the last two or three years. He supervised her during the 2019 timeframe when she was a systems engineer. He considered her to be diligent worker who was trustworthy and a self-starter. He recommends her for a security clearance based on her good judgment. In a six-month performance evaluation for the period ending in February 2020, the program manager indicated that Applicant's advance knowledge and work ethic presented superior benefits to contract leadership and client leadership. (Tr. 14-23; AE 3F)

Applicant's husband testified they have been married for 14 years or since 2007. He acknowledged that they talked about the employment with the firm (SOR ¶ 1.b), but based on the fact that all job fair participants were cleared, they assumed the firm was a legitimate business. (Tr. 23-31)

In the husband's view, Applicant's trustworthiness has kept them married. She provided unwavering support when he learned he had to leave the service because of a reduction-in-force. He believes Applicant would never intentionally do anything illegal. He believes she has the necessary judgment and trustworthiness to merit security clearance eligibility. (Tr. 31-40)

A friend and Applicant's former coworker for 12 years, admires how dedicated she has been to the United States and her family. Based on her strong work ethic and dependability, Applicant warrants a security clearance. (AE 1G)

Applicant's former supervisor from 2016 to 2019, praised her hard-work and commitment to complete the task at hand regardless of difficulty. The supervisor observed her patience and problem-solving ability. As one of the supervisor's best employees, Applicant warrants a security clearance. (AE 1H)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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 in seeking a favorable security decision.

Analysis

Financial Considerations

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. Conditions that could raise a security concern and may be disqualifying include:

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

In June 2014, Applicant stopped paying the mortgage on her home (SOR ¶ 1.a). I conclude that Applicant was not responsible for charged off car debt in SOR ¶ 1.b. Rather, she was victimized by the fraudulent scheme of the firm. In June 2017, the education loan became delinquent. The inability to satisfy the debts alleged in SOR ¶¶ 1.a and 1.c establishes a history of accumulating delinquent financial obligations with the meaning of AG ¶¶ 19(a) and 19(c).

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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 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.

SOR ¶¶ 1.a, 1.b. - The circumstances leading to Applicant's November 2013 short-term employment with the firm (SOR ¶ 1.b) and inability to pay her mortgage (SOR ¶ 1.a) beginning in June 2014 were related events aggravated by financial problems. Though she had been actively searching for employment since June 2013, she had no job after her honorable discharge in September 2013. She experienced added anxiety about her near-term employment prospects when the Federal government shutdown in October 2013 triggered a hiring freeze by defense contractors. At least one prospective employer could not hire her as a result of the freeze.

While Applicant's decision to participate in the car transaction constituted poor judgment, the firm clearly took advantage of her unemployment and her naiveté to the fraud contained in the contractual arrangement that concealed her potential liability. Based on Applicant's exculpatory actions in cooperating with the victims' group leader and the authorities leading to the prosecution and conviction of the principal actor and his coconspirators, I am convinced she had nothing to do with the scheme of the firm to fraudulently sell cars to overseas buyers.

Though Applicant stresses that her nine-month period of unemployment in the first half of 2014 was the sole reason she was unable to continue paying her mortgage, her August 2018 personal subject interview (PSI) shows that some overuse of credit during the period contributed to her financial difficulties. While she was forthright about the foreclosure in her previous security clearance reviews, and in her April 2018 e-QIP, her August 2018 PSI, and at the January 2021 hearing, little if any mitigation is available under AG ¶ 20(d) because Applicant has had steady employment since June 2014. In addition to offering partial mortgage payments, which were rejected by the lender, she could have tried alternatives, i.e., a home loan modification (HLM), a short-sale, or return the home to the lender via deed-in-lieu of foreclosure options, to avoid

foreclosure of her home. Instead, she remained in the residence illegally for three years.

Regarding the VA education account (SOR ¶ 3.a), Applicant stated in her August 2018 PSI that she was trying to find the proper VA payment location to begin a repayment plan. She recalled that her 2018 tax refund was subtracted from the delinquent account balance. Even though Applicant's documentation shows that she did not completely satisfy the education account until December 2020, six months after she received the SOR, she is still entitled to some mitigation under AG ¶ 20(d) based on her affirmative conduct in following through with her August 2018 intention of establishing a repayment plan to resolve the account.

AG ¶ 20(c) applies based on Applicant's financial counseling and successful completion of a three-year payment plan in 2018, showing that she paid off approximately \$8,200 in unlisted delinquent debt.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

In June 2013, Applicant realized she could not reenlist in the Army. In the same month, she began looking for a job in the defense contractor industry. In October 2013, she had at least one defense contractor ready to hire her. Unfortunately, the Federal Government shutdown prevented this contractor from hiring her. Applicant was still unemployed in November 2013 when the firm hired her.

Having carefully evaluated Applicant's August 2018 PSI and her January 2021 testimony, it is fair to conclude that she was in "over her head" when she agreed to the terms of the firm's employment. Unlike the other participants of the job fair, no security clearance was required by the firm and she never signed an agreement to work for the firm. She knew or should have known that car ownership could not be transferred without a car title. In sum, Applicant's exercised poor judgment. However, the

unintentional blunder involving the firm occurred only once, more than six years ago, and the conduct is ultimately mitigated.

Applicant was unemployed for nine months until June 2014, when she stopped making the mortgage payments. Overuse of credit before and during the period must also be considered based on the type of accounts she confirmed in the August 2018 PSI. Even though she should have done more to address the delinquent mortgage, she did not lay fallow during the three-year period. She paid off about \$8,200 of delinquent debt when she successfully completed the repayment a plan in June 2018. She provides encouraging evidence showing that she has been trying to manage her finances more responsibly. Additional financial counseling is necessary to fortify Applicant's management of her finances. She should create a flexible written budget to monitor her income and spending on a regular basis. When her income and spending changes she should make the corresponding changes in her budget.

Applicant's character evidence from a former supervisor, and present and former coworkers demonstrate that she is good at what she does. Her commitment to her children's extracurricular activities is admirable. Based on the surrounding circumstances in this case, Applicant has mitigated the security concerns arising from the guideline for financial considerations.

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.c:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge