



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 20-01228
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

04/08/2022

Decision

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to mitigate the security concerns raised by Applicant’s financial problems. Her request for a security clearance is granted.

Statement of the Case

On June 25, 2019, 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. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, make an affirmative determination that it is clearly

consistent with the interests of national security for Applicant to continue to have access to classified information.

On September 3, 2020, the DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR is one of the adjudicative guidelines (AG) 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 from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 25, 2021, and I scheduled a hearing to be convened via video teleconference on February 1, 2022. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 7. Department Counsel also provided a list of exhibits and a discovery letter that are included in the record as Hearing Exhibits (HX) 1.

Applicant testified and produced Applicant Exhibits (AX) A – C. I held the record open after the hearing so Applicant could submit additional relevant information. I received a transcript of the hearing (Tr.) on February 8, 2022. The record closed on February 18, 2022, when I received and admitted AX D – I.

Procedural Issues

The allegation at SOR 1.i alleged that Applicant owes \$46,165 for a delinquent car purchase loan. At hearing, Department Counsel moved to amend SOR 1.i to reflect an actual balance due of \$9,970. Without objection, I granted the Government's motion pursuant to Directive, E3.1.17.

Department Counsel also introduced a Pre-Foreclosure Report as GX 7. After some discussion, Department Counsel withdrew the exhibit. It is included in the record; however, I have not considered its contents. (Tr. 27 – 28)

Findings of Fact

The SOR, as amended, alleged that Applicant owed \$332,265 for 20 delinquent or past-due debts (SOR 1.a – 1.p and 1.r – 1.u). Also alleged was a mortgage in foreclosure with a \$276,088 balance due. The debts at SOR 1.a, 1.g, 1.t – 1.u are for unpaid medical services totaling \$19,099. In response, Applicant admitted, with explanations, all of the SOR allegations. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 47 years old and has worked for a defense contractor since January 2018. She worked for federal contractors between 2002 and 2006, then was self-employed until 2017 as the owner of a small defense contractor, which she ran with her

then-husband. Applicant served as an enlisted member of the United States Marine Corps (USMC) between 1993 and 2008, when she was honorably discharged. Applicant has a solid reputation with her employer and with their government customer. She is regarded as a hard worker and a productive member of the contract team to which she is assigned, and she volunteers at her church in her spare time. (GX 1; GX 2; AX A; AX D – G; Tr. 42 – 43)

Applicant was married between 2000 and 2002. She has a 21-year-old child from that marriage whom she has raised without financial assistance and for whom she has paid college tuition. Applicant remarried in August 2002 but divorced in August 2020. It was with her second husband that she ran her small business. They have two children whom Applicant is raising with little or no financial support from their father. (GX 1; GX 2; AX K; Tr. 37 – 38, 54)

The SOR allegations are supported by her disclosures of financial problems in her e-QIP (GX 1) and by credit reports obtained as part of the ensuing background investigation and adjudication. (GX 3 – 6). Applicant discussed the debts alleged during personal subject interviews conducted on August 8 and 15, 2019 (GX 2), and she admitted to all of the SOR allegations (Answer). At the outset, Department Counsel conceded that the debts at SOR 1.b, 1.i, and 1.j had been resolved. (AX B; AX C; AX I; Tr. 14 – 15)

Applicant attributes her financial problems to a business downturn in late 2016 and her divorce in 2020. As to her business, her company worked as a subcontractor on a project for which a much larger company was the prime contractor. When that company lost the contract, Applicant's company was unsuccessful in its bidding to continue working on the next contract, and she had to look elsewhere for new business. Thereafter, Applicant and her ex-husband had mixed success generating revenue for their company. Applicant's ex-husband also became less involved in the company so that he could pursue unrelated personal interests. Applicant took her current job in 2018 because income from her company no longer could support their family. She also took a part-time job starting to make ends meet in late 2017. Additionally, unexpected medical problems adversely affected her finances when she had unplanned surgeries in March 2017 and March 2018. Even though she had medical insurance, her deductibles were high and posed unexpected expenses she struggled to pay. Applicant and her ex-husband began divorce proceedings in late 2019. The legal expenses of a contentious divorce, as well as his lack of financial support also have hurt her finances. Further contributing to her financial problems has been her commitment to pay college tuition for the child of her first marriage, whose father has not supported in that regard. That child will graduate in the spring of 2022. Applicant's second husband was unemployed when they divorced and was ordered to pay only \$250 a month to augment medical insurance for her younger children. (GX 1; GX 2; AX F; Tr. 47 – 53)

Applicant started her small business in State A. In August 2005, she and her ex-husband bought a house there. The mortgage debts at SOR 1.q and 1.p were obtained

to finance 80 percent and 20 percent, respectively, of the purchase price of that home. In 2007, they bought a home in State B to be closer to the largest of her company's customers. When they moved, they had difficulty selling the house in State A due to a weak housing market. They had sporadic success renting it while it was listed for sale, and they eventually resolved the SOR 1.q mortgage in 2019 by selling it for far less than the total balances owed on the three related mortgages. Available information shows that both accounts are still outstanding as either foreclosures or as charge-offs of the deficiency due after sale of the house. (Answer; GX 2; GX 3 – 6; AX B; Tr. 75 – 89)

In February 2007, Applicant and her ex-husband paid \$500,000 for their first house in State B. The mortgage debts at SOR 1.k, 1.m, and 1.o are equity loans associated with this property. In May 2012, Applicant and her ex-husband bought and moved into another house in State B. Because the housing market continued to underperform, they again had difficulty selling the first house, again having mixed success renting the property while it was listed for sale. The primary mortgage of \$400,000 was foreclosed in December 2017. One of the equity loans, either SOR 1.m or 1.o, was used to pay the remaining \$100,000 for the purchase price. The SOR 1.k loan was used to finance installation of a pool soon after Applicant and her ex-husband moved in. The foreclosed first mortgage was not addressed in the SOR. The debts at SOR 1.k, 1.m, and 1.o remain unresolved. They are joint liabilities which Applicant believes her ex-husband should help resolve. She reports that he will not respond to her requests to do so. Applicant is unable to pay anything meaningful toward these debts and is waiting for them to fall off her credit history by 2025, when the seven-year reporting period under the Fair Credit Reporting Act (FRCA) expires. (GX 2 – 6; AX B; Tr. 68 – 80)

Applicant and her ex-husband bought the second State B house for \$875,000. The mortgage debt alleged at SOR 1.i represents the primary mortgage for that purchase. Applicant and her ex-husband made their last payment on that mortgage in May 2018. Applicant and her ex-husband lived together in the house from the time divorce proceedings were initiated in 2019 until they sold the house in April 2020. This sale satisfied the mortgage at SOR 1.i. Applicant acknowledges that the decision to move in 2012 was purely discretionary, and in hindsight, that it was a poor decision by her and her ex-husband. (GX 1 – 6; AX B; AX I; Tr. 60 – 68, 104 – 105)

The debts alleged at SOR 1.a – 1.g, 1.t and 1.u are for unpaid medical bills. As noted above, Applicant underwent emergency surgery in 2017 and in 2018. Although she had medical insurance, she estimates the deductible for each procedure was as high as \$5,000. In addition to information showing she has paid the debt at SOR 1.b, Applicant averred that her remaining medical bills totaled \$12,839 and were owed to a single medical creditor not specified in the SOR. The debt at SOR 1.h is for a delinquent credit card account totaling \$21,345. Applicant used the card to cover expenses when her business started failing and her ex-husband was out of work. Applicant had another delinquent card for \$6,597 with the same creditor. The creditor apparently agreed to \$12,986 in satisfaction of those debts. When Applicant and her ex-husband closed the sale of their second State B house in April 2020, Applicant's medical debts and the

delinquent credit cards were paid directly from the proceeds of sale. (Answer; GX 1 – 6; AX B; AX C; AX I; Tr. 55 – 60, 81 – 84)

The net proceeds from the April 2020 sale of Applicant's house provided Applicant and her ex-husband with \$135,230, which they split evenly through their divorce. Applicant used her share (\$67,615) to buy a car because her's had been repossessed in October 2018, as addressed at SOR 1.i. Applicant has also used this money to pay her divorce-related legal fees and to pay college tuition for her oldest child. She paid the \$2,508 debt alleged at SOR 1.j and began addressing smaller medical and other debts of which she was aware at the time. The SOR 1.i debt for \$9,970 (amended from \$46,165) is for the remainder after resale of a repossessed car. Applicant chose to pay other debts and to support her son's education, while allowing this debt to drop from her credit history after seven years in 2024 or 2025. (Answer; GX 1 – 6; AX B; AX C; AX I; Tr. 64, 98 – 99)

The debts at SOR 1.r and 1.s also remain unresolved. They are delinquent credit card accounts in Applicant's name, which she avers were used by both her and her ex-husband, and for which she believes he is jointly responsible. She further claimed that their debts were divided between them in their divorce decree, a copy of which she stated she would provide post-hearing but did not. (Answer; GX 1 – 6; AX B; Tr. 94)

Applicant testified that her current finances are stable, in that, she is able to meet all of her regular monthly expenses. She further explained that her decision to let some of her debts fall off her credit history after seven years is an acknowledgment that she will be unable to resolve larger debts related to mortgages and repossessions for which her ex-husband is jointly liable. Nonetheless, she is trying to resolve her more modest debts, such as her medical bills and retail credit card debts left from her marriage. Applicant also has eschewed credit cards, choosing to live on a cash-only basis. She has cut expenses where possible, has a second job, and has started saving money, albeit at a modest rate. She has not engaged in any formal credit counseling or financial management assistance, choosing instead to research debt resolution strategies on her own. Applicant insists she is doing the best she can to resolve her debts and manage her finances appropriately; however, she sometimes is hindered by unexpected expenses, such as a recent major car repair. (Answer; AX F; AX H; Tr. 84 - 90)

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. (See *Department of the Navy v. Egan*, 484 U.S. 518)

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 presented sufficient information to support the SOR allegations that Applicant incurred significant amounts of delinquent or past-due debts, mostly in the form of six delinquent mortgage and home equity loans. Available information shows that only one of her mortgage debts (SOR 1.i) has been resolved. Additionally, a debt remaining after a car repossession and two credit card delinquencies remain unpaid. This information reasonably raises a security concern about Applicant's finances that is articulated 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. 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.

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.

I have considered the following pertinent AG ¶ 20 mitigating conditions:

- (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.

AG ¶ 20(a) does not apply because Appellant still has unresolved debts that arose over several years. Accordingly, her financial problems must be viewed as frequent, recent, and ongoing.

The first prong of AG ¶ 20(b) applies because Applicant's financial problems resulted, in large part, from difficulties in the housing market between 2007 and 2017, unplanned surgeries in 2017 and 2018, the downturn in her business starting in 2016, and from her subsequent divorce in 2020. While the decision to buy a second State B

home was ill-advised, that decision was made jointly with her ex-husband and she was not solely responsible for it. She incurred unplanned expenses in the form of legal fees for her divorce, and large deductibles for surgeries in 2017 and 2018, and she receives only nominal financial support from her second husband.

To fully apply AG ¶ 20(b), it must be shown that Applicant acted responsibly given the circumstances with which she was faced. I conclude she has. The mortgage debts were incurred together with her ex-husband and are of such a scale given her income since 2018 that they cannot reasonably be addressed by only one of them. Instead, Applicant has focused on resolving her more modest debts to the extent her available resources will allow. Most, if not all, of her medical debts are paid, as are two of her commercial credit accounts. She also is faced with the fact that many of her largest debts will no longer be collectible in the next two or three years and has decided to let that process run its course. Resolving debts in this way, standing alone, is not an acceptable means of addressing one's debts. In this case, however, Applicant is simply unable on her own to constructively address the mortgage debts, for which her ex-husband is jointly responsible. By contrast, she has paid what she can, cut expenses, taken a second job for extra income, and is meeting all of her current obligations without incurring further debt. I conclude that all of the information probative of this mitigating condition supports application of AG ¶ 20(b).

AG ¶ 20(c) does not apply because Applicant has not engaged in any credit counseling or other professional financial assistance in resolving her debts. AG ¶ 20(d) applies to some of Applicant's medical debts, which she paid with proceeds from the sale of her second State B house, and to her payment of three of her retail credit accounts.

Applicant still is responsible for a significant amount of debt through her unresolved mortgages and one car repossession; however, the analysis under this guideline does not focus solely on the presence of outstanding delinquencies. Despite her financial problems, Applicant has demonstrated good judgment and trustworthiness in resolving those debts that were within her means to pay, and by cutting expenses and avoiding additional debt after her divorce. Available information shows that Applicant's financial problems are unlikely to recur and that she is unlikely to resort to inappropriate conduct to generate funds to pay her remaining debts. The concerns raised under this guideline are mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's debts arose from circumstances beyond her control and her response to those problems reflects positively on her judgment and reliability. Also of note is her honorable service in the Marines, the positive information about her job performance from her current employer and government customer, and other positive information about her character and integrity. The record evidence as a whole supports a fair and commonsense conclusion in favor of granting her request for continued access to classified information.

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.u: 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