



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 20-03784

Appearances

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

08/01/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant resolved most of the delinquent debts alleged in the SOR. Several circumstances beyond her control impacted her finances and ability to repay debts. Applicant provided sufficient evidence to mitigate the resulting financial considerations security concerns. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 8, 2020. On April 2, 2021, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 26, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on April 5, 2022.

The hearing was convened as scheduled on May 11, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant did not provide any documentation at the hearing. I held the record open to provide her with the opportunity to submit documentary evidence. After the hearing, she timely submitted documents that I marked as Appellant's Exhibits (AE) A – O, and admitted into evidence without objection.

Findings of Fact

In her Answer, Applicant admitted SOR ¶¶ 1.a - 1.d, and 1.g, and denied ¶¶ 1.e and 1.f. Her admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact:

Applicant is 34 years old. She was married in 2010 and divorced in 2013. She remarried in 2021, and has two young children with her second husband. She has been employed as an airplane mechanic by a defense contractor since 2019. She served on active duty in the Navy from 2010-2015. She was deployed three times during this period. She served in the Navy Reserves from 2015-2022, and received an honorable discharge. She has held a security clearance since about 2011. She earned an associate's degree in 2017, and several trade school certificates in 2020. (Tr. 17 – 26; GE 1)

Applicant stated that her financial problems started in her early 20s after joining the Navy. She was immature, and made some poor financial decisions because of her youth and inexperience. In 2013, she separated from her first husband. While she was on deployment, he ran up charges on her credit card, stole almost all of her possessions out of her apartment, and emptied her bank account. He also absconded with a vehicle that they jointly owned. When they divorced later that year, he was in prison. (Tr. 34-43, 97)

In 2015, after Applicant left active duty service with the Navy, she was unable to find gainful employment. She had several jobs at a time earning minimum wage, and was living paycheck to paycheck. She stated that she was barely able to afford her monthly expenses, and was unable to resolve outstanding debts until she obtained better employment. She finally obtained employment in her career field as an airplane mechanic in 2019. She is now earning about \$71,000 annually. (Tr. 34-43, 87-91)

In 2020, when her finances stabilized, Applicant started researching how to repair her credit and resolve her debts. She stated that she did her best not to incur new unnecessary debt. Through a finance-related podcast, she found a credit repair group that provided financial counseling and other specific guidance to members for minimal cost. She used the information that she learned to start making settlement offers to her creditors, and requested debt validations for accounts that she believed were fraudulent. She has been using this method to address the debts listed on the SOR. (Tr. 26-28, 32-33, 82-84, 94)

In 2017, Applicant became seriously ill while pregnant. This created loss of wages and financial hardships. When she became pregnant again in 2021, she took proactive financial measures, anticipating that she would be unable to work for a period of time. She prepaid some of the family's monthly bills six months ahead, to include car payments, so she and her husband would not be at risk for default or repossession.

This expense took away from her ability to resolve some delinquent debt. (Tr. 40-46, 49-59)

Applicant submitted a monthly budget. It shows that she and her husband are able to meet their monthly expenses, and pay debts. Their biggest monthly expenses are for child care and their vehicle payments. While costly, she was able to credibly explain why her family needed the used SUV she purchased in 2021. In 2022, she has already paid about \$1,200 of medical debt from her 2021 pregnancy and delivery; about \$3,000 of her husband's debt; and settled two of the SOR debts. (Tr. 42-43, 71-82, 87-91, 96; AE A-H)

The SOR alleges six delinquent debts, totaling about \$30,000, as well as a suspension of Applicant's security clearance in 2011, for financial reasons. The status of the debts are as follows:

SOR ¶ 1.a is a credit card that has been charged-off for \$8,207. Applicant stated that she incurred this debt in 2015 when the transmission went out in her vehicle. While the repair was costly, it was less expensive than acquiring a new vehicle. Since her savings were limited, she charged the repair cost to her credit card. After leaving the Navy, she stated that she was struggling to earn enough money to cover her basic expenses, so she stopped paying her credit card. She contacted the creditor to settle this debt. She provided documentation showing that she paid the negotiated settlement offer. The debt is now resolved. (Tr. 34-41; AE F, G)

SOR ¶ 1.b is student-loan debt placed for collection for \$19,187. Applicant stated that she did not defer her student loan repayments while she was in school or afterwards, because neither the lender or her school's financial aid department advised her that was possible. When she contacted the lender, she was offered an income-based repayment plan that she could not afford at the time. Once her finances stabilized, she contacted the lender to rehabilitate the loan. In 2021 she made some \$109 monthly payments, and her current monthly payments are \$220. Her intent is to consolidate the debts into one loan. She has also applied for loan forgiveness for part of the balance, and has a plan to resolve this debt in the near future. (Tr. 29-30; 53-63; AE A)

SOR ¶ 1.c is a credit card that was placed for collection for \$1,228. Applicant stated that this account was likely the result of fraud, and she has contested this debt. She currently has another credit card account with this creditor in good standing. She asked for debt validation for this account, and the creditor provided invalid personal information. She also claims that she made a settlement offer several months ago to get it off her credit report, and never received a reply. She has not received further correspondence from the creditor. (Tr. 30-31, 63-67; GE 6)

SOR ¶ 1.d is a debt in collection for \$675. It was a store credit card that her ex-boyfriend used to purchase clothes for himself. Applicant contacted the creditor and sent them a settlement offer. This debt is now resolved. (Tr. 31, 67-69; AE C)

SOR ¶ 1.e is a debt in collection for \$245. Applicant stated this was a bill for cable and internet services. She has resolved this debt. (Tr. 31, 69-70; AE B)

SOR ¶ 1.f is a credit card debt that was charged-off for \$451. Applicant has resolved this debt. (Tr. 31, 69-70; AE D, H)

SOR ¶ 1.g alleged that Applicant had her security clearance suspended for financial reasons in 2011. While this is accurate, she appealed the Navy Central Adjudication Facility's (CAF) decision, and her clearance was reinstated. Applicant stated that she worked with a Navy attorney to resolve the case. They submitted documentation showing that she contested the majority of accounts on the SOR, because they were fraudulent, and these creditors were unable to validate these debts. She admitted responsibility for some of the debts, and took action to resolve them at that time. She was told by the Navy CAF in October 2011 to continue to meet her financial obligations. The debts from 2011 were not connected to her later financial problems. (Tr. 34-43, 97; GE 3)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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(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."

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The SOR debts are established by the credit reports in the record, and Applicant’s admissions. AG ¶¶ 19(a) and 19(c) apply. SOR ¶¶ 1.c resulted from a fraudulent account, so it is not established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

Applicant's debts are largely due to circumstances beyond her control, including her inability to find gainful employment after leaving the Navy, illness during pregnancy, and hard financial choices she had to make when she had limited income. All of these events caused a personal and financial strain that impacted her ability to address her debts. The record clearly shows that for the last two years, she has been responsibly managing her finances; sought professional financial advice; made efforts to resolve delinquent debt; and has a plan to resolve the balance of her student loans, which is her last remaining SOR debt. AG ¶¶ 20(b) and 20(c) apply.

Similarly, Applicant provided sufficient evidence that she has undertaken good-faith efforts to address her debts. She has contacted her creditors to verify her debts and make settlement offers. She has paid the debts as quickly as she has been able. She has taken the proper measures to dispute an account that she credibly believed was fraudulent. Applicant is not required to show that she has paid or resolved all of her debts, or that she has done so in any particular way. She need only show that she has a reasonable plan in place to resolve her debts, and that she has taken steps towards implementing it. Applicant has done so. AG ¶¶ 20(d) applies.

In her testimony, Applicant repeatedly stressed that her poor financial decisions and the bad financial circumstances of her past, reflect a much younger and less experienced person. She is now more mature, reliable, and knowledgeable than the person who got into financial trouble seven years ago. Her personal and professional life are now stable. She has a firm foothold in her career field, and a strong financial plan for the future. Her past financial troubles occurred under circumstances that are unlikely to recur. AG ¶ 20(a) applies.

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 relevant 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 her military service, performance review, and letters of recommendation highlighting her character, trustworthiness and reliability. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant established that all of her SOR debts are being paid or are otherwise resolved. She has contacted creditors, and made payment arrangements, where possible. She has been responsibly managing her finances, made efforts to resolve delinquent debt, and has a plan to resolve her remaining debt in the near future. Applicant's debts became delinquent due to circumstances beyond her control, including a divorce and employment instability. Given her service with the Navy, and her good faith efforts in resolving her debts, I believe that she has met her burden of mitigating the financial considerations security concerns arising out of her delinquent debts under Guideline F. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant 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 - 1.g:

For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Ross D. Hyams
Administrative Judge