



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



In the matter of:)
)
) ISCR Case No. 20-03522
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2022

Decision

MURPHY, Braden M., Administrative Judge:

The financial considerations security concern in this case relates to a single, large, charged-off auto loan and a resulting bankruptcy. Applicant credibly established that the financial issue resulted from a single isolated incident of poor judgment that has been resolved and will not be repeated. She provided sufficient evidence to mitigate financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 11, 2019. On January 8, 2021, the Defense Department (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The SOR was issued under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on February 22, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was initially assigned to another administrative judge on March 16, 2022. The administrative judge issued a pre-hearing case management order and exchanged e-mails with the parties on procedural matters.

On April 20, 2022, DOHA issued a notice scheduling Applicant's hearing for May 17, 2022, to occur in person at a geographic location near where she lived and worked. On May 10, 2022, the case was assigned to me, after the initial administrative judge became unavailable.

The hearing convened as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1-6, and Applicant offered Applicant Exhibits (AE) A-D, all of which were admitted without objection. Applicant and one witness also testified. I held the record open, initially until May 31, 2022, to allow Applicant the opportunity to submit additional information. She timely submitted documents which I marked as Applicant's Post-Hearing (PH) Exhibits 1-6, all of which were admitted without objection.

On July 25, 2022, Applicant reported that she had been contacted by police about recovery of the vehicle which is largely the subject of this case. I therefore reopened the record and admitted the related e-mails (marked as PH Exhibit 7) without objection. Correspondence between myself and the parties is also included in PH 7. Applicant's post-hearing exhibits are discussed and identified in the Facts section, below. DOHA received the hearing transcript (Tr.) on May 24, 2022. The record closed on July 27, 2022.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a and 1.b, each with a brief explanation. Her admissions and explanations are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 48 years old. She is a single parent with two sons. One son is in his thirties and serves in the U.S. Army. She also has a 10-year-old son who lives with her at home. She has a bachelor's degree in engineering. She has worked in the defense industry, with a clearance, since 2002, and for her current employer since 2010. (Tr. 31-33, 55; GE 1)

Applicant lives in State 1. Mr. C is the brother of Applicant's character witness, W. Mr. C has lived in a large city in State 2 (but has now relocated to State 1, according to W (Tr. 88.) Applicant and Mr. C dated long-distance for about a year, in about 2008. They remained friends afterwards. Applicant and W would visit Mr. C in State 2 fairly frequently in later years. (GE 6)

Mr. C owns an auto parts and repair shop, among other ventures, in State 2. Applicant testified that he had a "lavish lifestyle," (Tr. 36, 57) and expensive taste, particularly for cars. In 2016, Mr. C approached Applicant for help in financing and

purchasing an expensive, high-end, luxury car. He said his credit cards were “maxed out” and could not afford to do so himself. (Tr. 59; GE 6) In exchange, she said he told her he would help pay off her student loans of about \$5,000-6,000. (Tr. 36, 62)

In about September 2016, Applicant flew to State 3 at Mr. C’s expense. She met the sales person in State 3, and signed the papers for the car. Mr. C remained in State 2, and the dealer transported the car there after the transaction. (Tr. 36-38)

Applicant paid for the car by taking out a loan from Bank A of about \$136,000. It was her understanding that Mr. C would be making payments on the car. (GE 6) She said he made only about two monthly payments (of about \$1,200 each). (PH 1) Applicant was soon notified by Bank A that payments had fallen behind. Initially, Mr. C was involved in discussions with the bank, and said he would make payments, but did not follow up. (Tr. 36-37, 61) Mr. C did not assist Applicant with her student loans, as he had promised. (Tr. 36, 62)

In about 2017, the car debt was charged off. (Tr. 38-39; GE 3 at 12) (SOR ¶ 1.a) Applicant said Bank A made a settlement offer of about \$105,000 (\$8,700 a month for 12 months), but she could not afford it. (Tr. 41-42; GE 2; AE B)

Applicant retained counsel and filed a Chapter 7 bankruptcy petition in July 2020. (SOR ¶ 1.b) (AE C; GE 4, GE 5) She declared the car debt at SOR ¶ 1.a, along with several other debts. Her declared nonpriority debt total was about \$171,437 (of which \$140,740 concerned the car loan). (GE 5 at 14, 18; AE B) She reaffirmed two debts, both mortgages on her home, totaling about \$290,000. (Tr. 48-49, GE 5 at 11-12, 33) The debts were discharged in December 2020. (AE A) The docket sheet from the bankruptcy case reflects that Applicant participated in credit counseling during the bankruptcy process, as required. (GE 5 at 2)

Applicant disclosed the car debt (SOR ¶ 1.a) on her SCA and explained the circumstances in her background interview, as well as in her hearing testimony. (GE 1, GE 6) She is remorseful about her conduct, and recognizes in hindsight that she made a poor decision to enter into this arrangement with Mr. C, which put her family, finances, clearance, and career in great jeopardy. She had never done this before, has not done it since, and will not do it again. She does not live beyond her means. (Tr. 27-29, 66-67, 70; GE 2 at 6; PH 5)

Applicant testified that the last time she saw Mr. C was several months ago at a family funeral. They did not have contact. (Tr. 52-53)

Applicant contacted police about the car and attempted to file charges against Mr. C for theft by deception. She was told she could file only a “miscellaneous report of a civil dispute” against him, since she had been told that State 1 police authorities had no jurisdiction over the matter (since both the car and Mr. C were out of state. (Tr. 86, 94, 95; GE 1 at 29-30) She filed a police report in 2018 so that the police could retrieve the car. (PH 1)

Several months after her hearing, Applicant reported that she had been contacted by local police, who had informed her that the car was now in their possession, and was the subject of a fraud case. She said the officer requested contact information for the bank and the towing company. An e-mail from the officer that Applicant provided said he was unable to release any documentation to her, because the police matter remained pending. (PH 7)

Applicant's character witness, W, testified. W has a college degree She is a longtime friend of Applicant, of about 20 years. She lives in the same area as Applicant. She attested that Applicant is a "workaholic," who is loyal, dependable, and honest. Applicant does not deserve to have her career ruined over what W feels was a single instance of poor judgment. Applicant has had a difficult time in recent years, as both parents recently passed away. (Tr. 81-93; GE 6)

W is also Mr. C's brother. W attested that Mr. C has a long history of deceptive, criminal behavior. He took advantage of Applicant, as he has with many others, and she was a victim in the situation. He is very manipulative. She also said her brother is bipolar. Due to his mental health issues, W petitioned to have Mr. C involuntarily committed on multiple occasions in recent years, including at least in May 2018 and March 2019. (PH 2, PH 3) W confirmed that Applicant has broken off contact with Mr. C, and if he texts Applicant, she tells W to request that he stop doing so. (Tr. 81-93) She said, "I know for a fact this is something she'll never do again." (Tr. 91)

Applicant has an annual salary of \$145,000. (Tr. 71, AE E) She has savings and a remainder at the end of each month, and several hundred thousand dollars in her company retirement plan. (Tr. 75-77) Her credit reports show no delinquencies. (GE 3, GE 4)

Applicant provided recommendation letters from several references. They attested to Applicant's strong work ethic, dedication and commitment to the team and the company's goals. She is proactive, self-motivated, and deadline-oriented; she is a pleasure to work with. (PH 4) Applicant's recent and current work evaluations provided similar detail. (PH 6)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

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. 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.

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

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

In 2016, Applicant bought a very expensive luxury car for a friend. She took out a loan of well over \$100,000 to do so. He could not afford the vehicle, and neither could she. She travelled to a neighboring state at his request and signed for the car, which was then delivered to him, also out of state. Not surprisingly, the friend made only a few payments on the car. Applicant attempted to settle the matter with the bank but could not afford to do so. She resolved the matter by filing Chapter 7 bankruptcy (thereby resolving some of her other debts as well, though she reaffirmed her mortgage debts). AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate 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;

(c) the individual has received or is receiving 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;

Applicant made a very poor decision to assist Mr. C in buying him an expensive luxury car that he could not afford, and that she had no business buying herself. She has worked hard to make a good life for herself and her sons. By entering into the arrangement, she jeopardized her finances and her career. She credibly established that this was an isolated incident and she will not place herself in this position again. She recognizes that she made a very poor decision. She resolved the luxury auto loan debt through bankruptcy, and her bankruptcy has now been discharged. Applicant's credit history and current financial stability are otherwise excellent, as is her employment record. AG ¶¶ 20(a) and 20(c) fully apply to mitigate the financial security concerns in this case.

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(c):

(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 have incorporated my comments under Guideline F in my whole-person analysis. I give significant weight to Applicant's credibility and that of her witness. I considered her lengthy career with her employer and in the defense industry as a well-regarded employee to be highly positive evidence in her favor. I regard this as a serious but isolated incident that will not recur. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant provided sufficient evidence to mitigate the financial 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.b:	For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge