



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



In the matter of:)
)
) ISCR Case No. 21-00849
)
Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 30, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on June 9, 2021, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 24, 2022, scheduling the matter for a hearing on June 17, 2022. At Applicant's request and with no objection from Department Counsel, I cancelled that hearing on June 3, 2022, to allow Applicant time to recover from a medical

procedure. DOHA issued another notice of hearing on July 7, 2022, rescheduling the matter for a hearing on July 27, 2022. I convened the hearing as rescheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through L without objection. Applicant testified. At Applicant's request, I kept the record open until August 29, 2022, for additional documentation. By that date, Applicant submitted additional documentation, which I collectively marked as AE M and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on August 4, 2022.

Findings of Fact

Applicant admitted all of the SOR allegations. She is 50 years old, single, and she does not have any children. She earned a bachelor's degree in 1995. She has worked as an engineer for her employer, a DOD contractor, since 1995, but her medical issues since 2017 affected her ability to work full-time, as further discussed below. She returned to work full-time in July 2022. She has held a security clearance since 1996. (Answer; Tr. at 5, 7-9, 30-31, 46-50, 55, 66, 69; GE 1)

The SOR alleged that Applicant had eight delinquent consumer debts totaling \$56,284 (SOR ¶¶ 1.a - 1.h) and a \$62 delinquent medical debt (SOR ¶¶ 1.i). The SOR allegations are established by Applicant's admissions in her Answer, her 2020 security clearance application (SCA), a June 2020 background interview, and by credit bureau reports from 2020 and 2021. (Answer; GE 1-4)

Applicant began to incur delinquent debts in 2017, after she was in a near-fatal car accident and sustained injuries that caused her to be out of work for six months. Her employer placed her on short-term disability, and she earned only half of her annual income at the time, or approximately \$44,000. She subsequently received a \$19,000 settlement, which she applied toward the expenses that accrued while she was on short-term disability. From January to May 2020, her employer again placed her on short-term disability. She earned approximately \$45,000 during this period. From March to July 2022, her employer placed her on short-term disability for a third time. She earned approximately \$46,000 during this period. (Tr. at 32, 37-38, 45-50, 52-53, 55, 58-69; GE 1, 2)

SOR ¶¶ 1.a and 1.b are for two charged-off credit cards with the same creditor, for \$25,560 and \$11,350, respectively. Applicant used these credit cards to pay for household expenses. She stated in her SCA and indicated during her background interview that she was in the process of settling both debts. She established payment plans of \$717 monthly for SOR ¶ 1.a, and \$321 monthly for SOR ¶ 1.b, in August 2021. She made nine monthly payments totaling \$6,453, between August 2021 and July 2022, for ¶ 1.a. She also made 12 monthly payments totaling \$3,852, from August 2021 to July 2022, for SOR ¶ 1.b. She intends to continue these payment plans to resolve both debts. (Tr. at 31-35, 50-51, 55; GE 1, 2; AE A, B, M)

SOR ¶¶ 1.c and 1.g are for two retail accounts in collection with the same collection agency, for \$6,476 and \$1,342, respectively. Applicant stated in her SCA and indicated during her background interview that she planned to contact the creditor to settle both debts. In June 2021, she made payments of \$1,012 to SOR ¶ 1.c and \$468 to SOR ¶ 1.g. She stated that when she contacted the creditor in around August 2022 to resolve her remaining balances of \$5,464 and \$874, respectively, the creditor informed her that it had closed both accounts with a zero balance. She was awaiting documentation from the creditor reflecting that both SOR ¶¶ 1.c and 1.g were resolved. (Tr. at 35-43, 54-57; GE 1, 2; AE J, K, M)

SOR ¶¶ 1.d and 1.e are for two department store accounts in collection with the same collection agency, for \$6,313 and \$2,781, respectively. Applicant borrowed money from an associate and settled SOR ¶ 1.d in May 2022 for \$3,787. She intended to repay her associate, to whom she owed \$2,300 as of the date of the hearing. She established a payment plan of \$283 monthly, from July to December 2022, and she made a \$283 payment in July 2022, to resolve SOR ¶ 1.e. (Tr. at 38-41, 50-52; GE 2; AE C, D, M)

SOR ¶ 1.f is for an account in collection for \$2,118. Applicant stated in her SCA that she was in the process of settling this debt. In May 2021, the creditor offered her a settlement of \$529, but she did not have the financial means to pay the settlement. In August 2022, the creditor notified her that it had closed the account with a zero balance. (Tr. at 42, 55-56; GE 1, 2; AE L, M)

SOR ¶ 1.h is for a \$344 charged-off account. Applicant settled this debt for \$173 in July 2021. (Tr. at 43, 57-58; GE 2; AE I, M)

SOR ¶ 1.i is for a for a \$62 medical account in collection. Applicant settled this debt for \$10 in July 2021. (Tr. at 43; GE 2; AE H)

As of the date of the hearing, Applicant had returned to work full time in July 2022, and her annual salary was \$93,000. She was receiving financial counseling through her employer's benefits wellness program, and she developed a budget to track her income and expenses. She has owned her home since 2016, and she was current on her mortgage. She had approximately \$300,000 in her 401(k) retirement savings account. She has filed her tax returns as required and has not incurred any new unpaid debts. She has been on the path to financial control since her health improved, and she intends to continue to resolve her delinquent debts. She stated that she has received favorable performance evaluations from her employer. (Tr. at 43-50, 52-53, 55, 62-69; AE E, F, G, M)

Policies

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(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 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 Exec. Or. 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* Exec. Or. 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.

Applicant was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

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

Conditions beyond Applicant's control contributed to her financial problems. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. She has resolved SOR ¶¶ 1.d, 1.f, 1.h, and 1.i and she was in the process of resolving SOR ¶¶ 1.a, 1.b, and 1.e. After making a payment to SOR ¶¶ 1.c and 1.g, the creditor notified her that it had closed both accounts with a zero balance. She established good-faith efforts to repay her debts. Her finances are under control and they no longer cast doubt on her judgment, trustworthiness, and reliability. I find that ¶¶ 20(a), 20(b), 20(c), and 20(d).

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 have incorporated my comments under Guideline F in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude 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.i:	For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge