



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



In the matter of:)	
)	
)	ISCR Case No. 21-02372
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2022

Decision

MURPHY, Braden M., Administrative Judge:

The three debts alleged in the Statement of Reasons largely originated during Applicant’s separation and divorce, several years ago. Applicant provided sufficient information and documentation to mitigate resulting financial considerations security concerns. Applicant’s eligibility for access to classified information is granted.

Clerical Amendment to ISCR Case Number in SOR

When this case was processed by the Defense Office of Hearings and Appeals (DOHA), it was assigned as ISCR Case No. 21-02322, and the Statement of Reasons (SOR) was issued under that case number. Due to a clerical error, this case was erroneously entered into the DOHA database as ISCR Case No. 21-02372. The hearing notice and the hearing transcript also reflect this error. Since it is easier to change the case number in the SOR and the Decision than it is to change the case number in the DOHA database, I hereby do so, *sua sponte*, under ¶ E3.1.17 of Department of Defense (DOD) Directive 5220.6, cited in full below. The SOR is so amended, as reflected above.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 23, 2019, in connection with her employment. On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant an SOR detailing security concerns under Guideline F (financial considerations). The CAF issued the SOR under Executive Order 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 (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 4, 2022 (referenced as 2021 in error), and requested a hearing before an administrative judge. The case was assigned to the DOHA hearing office on February 3, 2022, and assigned to me on September 6, 2022. On September 19, 2022, DOHA issued a notice scheduling the hearing for October 24, 2022, by video-teleconference through an online platform.

The hearing convened as scheduled. At the hearing, Department Counsel offered documents that I marked as Government's Exhibits (GE) 1, 2A, 2B, 3, and 4. Applicant testified and offered Applicant's Exhibits (AE) A through D. (She had included AE D with her Answer). All of the exhibits were admitted without objection. At the end of the hearing, I held the record open until November 3, 2022, to provide Applicant the opportunity to submit additional information. (Tr. 77) Applicant timely submitted an additional statement (AE E) along with her annual appraisals from 2018, 2019, 2020, 2021 (AE F through AE I), and four letters of recommendation (AE J through AE M). Her post-hearing exhibits were admitted without objection. The record closed on November 3, 2022. DOHA received the hearing transcript (Tr.) the same day.

While preparing this case for decision, I noticed the clerical error in the case number discussed above. I notified the parties of the issue by e-mail on December 7, 2022 so they could be aware of it for their records. Since it concerns a procedural issue and not a substantive one, there was no need to reopen the record.

Jurisdiction

Applicant is employed by a U.S. government contractor with another federal government department. (Tr. 45) The cabinet department where she works has an agreement with DOD establishing DOHA jurisdiction over the case. See Directive 5220.6 at ¶ 2.2.

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a, 1.b, and 1.c, with brief explanations and a narrative statement. Her admissions are included in the findings

of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 42 years old. She and her prior husband were married from 2007 until they divorced in 2018. She has two children with him, ages 16 and 14, and one additional child, age 18, through a prior relationship. (GE 1; Tr. 42-43) Applicant and her children now live with her mother and sister. (Tr. 88)

Applicant has a high school diploma. She has held her job for 15 years, since 2008. She works as a contractor for another department of the Federal government. She works full time and earns about \$60,000 annually. She has held a prior clearance. (Tr. 10, 45-46; GE 1)

The SOR concerns three alleged delinquent debts, discussed below. Applicant discussed her debts freely in her background interview, and she provided supporting documentation about some of her debts for the interviewing agent. (GE 2a, GE 2b) They are also established by her admissions, statements in her answer, and by an April 2021 credit report. (GE 3)

SOR ¶ 1.a (\$38,680) is a debt that has been charged off by a credit union. (GE 2b; AE C) Applicant explained that the debt is a joint account between her and her former husband, regarding two vehicles that they purchased together while they were married. They fell behind on the car payments in about 2016, during their period of separation, and the cars were voluntarily repossessed. The alleged amount is what remains after resale. (Tr. 34-40, 66-68; GE 2a at 3; GE 2b)

Applicant testified that she contacted the creditor to propose a settlement several years ago, without success, since she could not afford what they offered. This was when she had to move following the marital separation. Her funds went towards moving and finding a home for herself and her children, and she could not address her debts until her situation stabilized. Her then husband was also unhelpful. Since the vehicles were financed jointly, she could not settle her auto account alone. (Tr. 48-49, 67-68, 75-76)

Applicant provided a January 2022 letter, addressed solely to Applicant's former husband, referencing a repayment agreement under which he is to pay \$380 per month for 101 months, with the final payment in April 2030. (AE A) She testified that he is making payments to resolve the debt. She has no documentation from him because they are not on speaking terms. She said that she has asked the creditor to inform her of any issues with his payments. In that event, she would assume the payments, though she has no documentation from the creditor to document such an arrangement. She said her former husband told her that he was advised during his own security clearance application process that he has to take care of the debt and is doing so. (Tr. 37-42, 46-50) She agreed, though, that "half of it is mine." (Tr. 69-71) She believes he is a government contractor but does not know where he works. (Tr. 85-86, 89)

AE B is an excerpt from an October 2022 credit report for Applicant showing she is a co-signer on the account. Several monthly payments of \$631 are indicated in early 2021, \$0 paid in April 2021, and \$18,048 paid in May 2021. Yet the balance is now listed as \$35,636. The last payment, of \$300, was made on September 30, 2022. (AE B; Tr. 26) Applicant's husband has sometimes paid less than what is owed on the account. (Tr. 49) The debt is being resolved by Applicant's former husband, pursuant to a documented agreement with the creditor.

SOR ¶ 1.b (\$1,209) is an account placed for collection by a utility company. The debt is about 8 or 10 years old, and is an account related to Applicant's marital home, which she left in 2016. She believes she brought the account current before she left. She documented that the account was deleted from her credit report. (GE 3; AE D; Tr. 27-28, 31, 50-55, 65, 74-75)

SOR ¶ 1.c (\$507) is a retail credit-card account placed for collection by a bank. (GE 2b) Applicant indicated in her Answer that she had arranged to settle the account. (Answer) She said in her testimony that she settled the account for about \$200 about five months before the hearing. She was unable to provide documentation of the payment, but said she would repay the debt if needed. She said a recent flood in her home destroyed any paperwork she might have had. (Tr. 32-34, 55-58, 84-85)

Applicant explained that her divorce precipitated her financial issues because her former husband stopped making payments on their accounts, without caring about the impact on her finances. She has taken care of her own finances since the divorce, and has had no financial issues since then. She has had her job for 15 years, and this is the first financial issue she has had. She knows her finances impact her job and needs the job to provide for her children. She will do what it takes to resolve her debts. (Tr. 44; GE 4 at 6)

Applicant provided a personal financial statement (PFS) with her interrogatory response in March 2021. It shows net monthly income of about \$3,330 and monthly expenses of about \$2,620, leaving a net surplus of about \$710. (GE 4 at 7) She testified that her monthly income has since increased, to about \$3,522, though her savings in the bank have decreased by a few hundred dollars. She sends money to her daughter who is in college. (Tr. 59-61) She has not participated in credit counseling. (Tr. 64) Her tax filings are up to date. (Tr. 64)

Applicant's former husband is supposed to pay her \$619 a month in child support. He has not done so in six months, but she was just notified that his wages will soon to be garnished to address it. (Tr. 43, 72-73, 86-87)

Applicant submitted an additional statement after her hearing. She said she wished she "could have done things differently" during her separation and divorce. Her aim was being there for her children as a parent and keeping her life from falling apart. She enjoys her job, which has been a big part of keeping things together as a family. Losing her former husband's income was difficult, since he was the primary "bread winner." She has

moved back in with her mother to help with the bills. She intended to do a better job of addressing her debts but was not able to do so in a more reasonable timeframe. She intends to work towards resolving her debts, and she needs her job to provide for her children. (AE E)

Applicant's project manager attests that she has been an integral part of the team since 2008. She is reliable, detail-oriented, and hard working. She has a positive attitude and is a willing team player. A close friend of 30 years attests that Applicant is a loyal, giving, and caring friend and a devoted mother. She works hard to provide for her family. She is honest and dedicated and would not do anything to jeopardize her job. She has regained financial stability and is working hard to maintain it. (AE J – AE M) In her annual work appraisals from 2018-2021, she is chiefly rated from Good to Excellent to Outstanding in her various evaluation criteria. (AE F-AE I)

Policies

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

The adjudicative 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 access to classified information will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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

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

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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.

Two of Applicant's three delinquent debts occurred around the time that she and her husband separated and divorced. Her debts are established by her admissions and by credit report data in the record. AG ¶¶ 19(a) and 19(c) apply.

The following mitigating conditions under AG ¶ 20 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; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

Applicant and her then husband experienced financial problems during the breakdown of their marriage. They found that they were not able to afford the two vehicles they purchased jointly, so those cars were voluntarily repossessed. The debt for both vehicles remains listed on Applicant's credit report. However, she also provided a letter from the creditor, addressed to her former husband alone, under which he has responsibility to pay under their settlement agreement. (AE A) Recent credit report excerpts show that payments are largely being made. The debt is being resolved by Applicant's former husband, pursuant to a documented agreement with the creditor. She states that she will assume responsibility for the payments if her former husband does not do so, but for now, they are his responsibility. SOR ¶ 1.a is being resolved and AG ¶ 20(e) applies.

The other two debts at issue are quite minor. One is an old power bill, also dating back to Applicant's former marriage. That debt has now been removed from her credit report. SOR ¶ 1.b is resolved, and AG ¶ 20(e) also applies to it. This leaves only the credit card account at SOR ¶ 1.c, for \$507. Applicant said she settled it for about \$200 earlier this year, and if she has not, she will do so, something she can clearly afford. SOR ¶ 1.c is also resolved.

Applicant understandably had financial difficulty adjusting to life without her husband's second income (and he has yet to provide required child support). But no other debts are evident. Her personal financial statement demonstrates financial stability. She now lives with her mother and sister, so there is no indication that she lives extravagantly or above her means. Her priority is, and has been, to provide for her children. She has a long career as a federal contractor, and does not want to do anything to jeopardize that. I also had the opportunity to observe Applicant's demeanor during the hearing, and I found her testimony credible. I find that her debts were largely attributable to her marital situation, and are not likely to be repeated, at least by Applicant's own conduct. She has acted reasonably under the circumstances, and her financial issues are unlikely to recur and no longer cast doubt on her judgment, trustworthiness, and reliability. AG ¶¶ 20(a) and 20(b) both apply.

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 the 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(a), 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. Applicant provided sufficient evidence to mitigate the security concern shown by her delinquent debts. Overall, the record evidence leaves me without questions or doubts as to her continued eligibility for a security clearance.

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, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge