



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-02128
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

05/24/2023

Decision

MASON, Paul J., Administrative Judge:

Applicant did not address her delinquent debts until after she discovered her security clearance was at risk. However, her delay was primarily due to a significant period of unemployment and underemployment of her husband. Except for the student loans, she has since settled her largest credit-card creditor in March 2013, and reduced her delinquent debt to the second credit-card creditor to \$579 in February 2023. She has until June 30, 2023, to resume payments on her student loans. In sum, she has mitigated the security concerns raised by the guideline for financial considerations. Eligibility for security clearance access is granted.

Statement of the Case

On June 22, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) for security clearance eligibility so that she could work for a defense contractor. On April 24, 2018, she provided a personal subject interview (PSI, Item 7) to an investigator from the Office of Personnel Management (OPM). On February 13, 2023, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the necessary affirmative finding to grant Applicant’s security clearance and issued an SOR to her

detailing security reasons under the financial considerations guideline (Guideline F). The action was taken under the DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

On February 20, 2023, Applicant provided an answer to the SOR. She elected to have her case decided on an administrative (written) record instead of a hearing. The Government sent a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant on February 23, 2023. Applicant received the FORM on March 8, 2023. The Government advised Applicant that, in her response, she could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. On March 22, 2023, Applicant filed a response with the Defense Office of Hearings and Appeals (DOHA). The Government indicated it had no objection to the response. The case file was assigned to me on April 26, 2023.

Rulings on Procedure

In a footnote on the second page of the FORM dated February 22, 2023, Department Counsel informed Applicant that her April 24, 2018 PSI (Item 7) would be excluded from evidence if she objected to the exhibit. Alternatively, Department Counsel advised her that she could correct, update, or modify the exhibit to improve its clarity or accuracy. Applicant did not object to this exhibit or any of the other four items. See, E3.1.20. of DOD Directive 5220.6, page 52. All items were admitted into evidence.

On page 3 of the FORM, and pursuant to ¶¶ E3.1.13 and E3.1.17 of DOD Directive 5220.6, the Government moved to amend SOR ¶ 1.a of the SOR as follows:

1.a – You are indebted to a creditor for an account that has been charged off in the amount of \$18,801.00. As of the date of the SOR, the account remains delinquent.

In her March 2023 response to the FORM, Applicant submitted the SOR ¶ 1.a creditor's offer of settlement letter dated February 3, 2023. The total amount due was posted as \$18,801.66, rather than the \$13,654 amount posted in the SOR. The Government's motion is granted, and the amount is changed to \$18,801.00.

In addition, the Government moved to amend the SOR by withdrawing SOR ¶¶ 1.b, 1.e, and 1.f, based on Applicant's documentation showing the allegations mitigated. These allegations are found for Applicant, because I have no authority to withdraw allegations from the SOR.

Findings of Fact

The SOR contains two delinquent commercial credit-card accounts, two delinquent student loans, and two delinquent medical accounts. Applicant admitted the

debts with explanations. The total amount of indebtedness is \$25,118. The debts became delinquent between July 2017 and February 2022.

Applicant is 53 years old. She has been married to her second husband since 2003, and has a 32-year-old son and a 26-year-old stepson. She received a high school diploma in June 1987. She took college credits in 1987 and 2015, but received no degree. Her employment since June 2018 is explained on the first page of her Response to the SOR dated March 9, 2023. See *also* Paragraph III of FORM at page 3. She has not been employed as a management assistant by the contractor since June 2018 as indicated in the FORM. In clarification, she worked for this contractor for a few months in 2018 before transferring to a technologies company until October 2020. She was hired by a subcontractor of her current employer (March 9, 2023 response to the FORM), then became a full-time employee of the company in March 2022. She has been a technical editor in all positions since June 2018. In the 14 years of her professional career, she has been employed in technical editor positions. She revealed in her June 2018 e-QIP that she was delinquent to the SOR ¶¶ 1.a and 1.b creditors. (GE 3 at 23-27; March 9, 2023 response to the FORM)

Before Applicant's employment as a management assistant for a few months in 2018, she was a bartender for six months in December 2017 to June 2018. She was unemployed from May 2016 to December 2017. Before her unemployment, she was a technical editor and analyst from July 2012 to April 2016. She was also a technical editor for another employer from March 2012 to July 2012. (Item 3 at 14-17)

SOR ¶ 1.a – This is a delinquent credit-card account totaling \$18,801.00. The last payment activity on the account was in in July 2017, during Applicant's unemployment from May 2016 to December 2017, and her husband's underemployment, that was not as stable as his former employment in the federal sector. When the creditor no longer accepted smaller payments, she saved her money until she successfully settled the account in March 2023 for \$9,400. (Item 3 at 14-23; March 2023 letter at 2; Attachment A, presented check #3923) This account is resolved.

SOR 1.b – In the Government's February 2023 credit bureau report (CBR), this credit-card account is classified as charged-off with a past-due amount of \$579. This account is posted as closed in the Government's February 2022 CBR, with a delinquent balance of \$4,268, the same amount appearing in the SOR. Applicant's documented payment record shows she has been making regular payments to the creditor since June 2016. Her payments since August 2020, which have not been more than \$100 monthly, though probably not the amount required under the terms of the credit-card contract, demonstrate her willingness to pay a small amount each month to eventually return the account to a current status. (Item 4 at 7; Item 5 at 2; Attachment E) The account is being resolved.

SOR ¶¶ 1.c and 1.d – These are two student loans that Applicant received. Applicant was working as a technical writer for a company from 2012 to 2016. (Item 3 at 16) Management informed her that to enhance her chances for promotion, she should

enroll in additional education classes to qualify for a degree. The company paid for her tuition. However, the company was purchased by another company. After receiving good news that her husband was going to be rehired at his former stable federal position in another state, Applicant learned the bad news that she would have to repay the company for the tuition, though she had not completed the courses for the degree. Generating insufficient funds to pay the loans through her cosmetics business, she allowed the loans to lapse. When she did not make the loan payments, they became delinquent. See ¶¶ SOR 1.c and 1.d. In October 2022, Applicant filed a student loan debt relief application. The application is pending. Meanwhile for COVID-related reasons, the U.S. Department of Education suspended Applicant's student loan repayments until June 30, 2023. (March 9, 2023 response to FORM, at 2; Attachment C at 9-16)

SOR ¶¶ 1.e and 1.f – These are two medical accounts that became delinquent in February 2022. On February 15, 2023, Applicant submitted documentation indicating that she paid both accounts on February 15, 2023. (March 9, 2023 response to FORM, Attachment D, at 18-19)

Character Evidence

In February 2013, Applicant revitalized her religious commitment and effectiveness as a technical editor. She believes that she has her life pointed in a healthy and positive direction. She is dedicated to keeping her finances current. (March 9, 2023 response to the SOR, at 2) With financial counseling and utilization of a budget, I strongly believe that Applicant's past financial problems will not recur.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines and all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of the whole-person concept. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel. . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

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

In July 2017, Applicant began accumulating delinquent debt. By the time the SOR was issued in February 2023, Applicant had incurred \$25,118 in delinquent debt. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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) and 20(b) apply to mitigate Applicant's delinquent delinquencies. While there are only six debts that became delinquent, it did not take long before Applicant's abuse of her credit cards caused her overall debt to spiral out-of-control. I am convinced that Applicant's financial problems were caused primarily by the circumstances of her unemployment and exacerbated by her husband's underemployment for one and a half years between May 2016 and December 2017. When she was able, she took documented action to resolve all the debts listed in the SOR. Her actions to responsibly resolve the delinquent debts entitle her to full credit under the second prong of AG ¶ 20(b). She receives commensurate credit under AG ¶ 20(d) for making a good-faith effort to repay her debts.

Though Applicant has not had financial counseling, she has exercised common sense in tackling her financial problems. Rather than abandoning her financial obligation to resolve SOR ¶ 1.a when the creditor refused to accept her partial payments, she saved her money over time and was able to settle the debt in March 2023. AG ¶ 20(c) applies in part.

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 53 years and has been married since 2003. She has one 32-year-old son and one 26-year-old stepson. She has been a technical editor for 14 years of her professional career. Within a month of the issuance of the SOR, Applicant satisfied four of the six debts. Repayment of the two federal student loan debts has been paused by the Government until June 30, 2023. I recommend that Applicant take financial counseling to increase her knowledge of responsible management and monitoring of her finances, especially her use of credit. Considering the entire record as a whole,

Applicant has mitigated the security concerns arising from the guideline for financial considerations.

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.f: 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 eligibility for access to classified information. Applicant's application for a security clearance is granted.

Paul J. Mason
Administrative Judge