



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 21-02558 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Tovah Minster, Esq., Department Counsel,
For Applicant: Carl Marrone, Esq.

08/16/2023

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 December 31, 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 the DOD on June 8, 2017.

Applicant responded to the SOR on January 10, 2022 (Answer), and she requested a hearing before an administrative judge. The case was assigned to me on February 16, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on February 21, 2023, scheduling the matter for a video teleconference (VTC) hearing on March 31, 2023. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A through FF, without objection. Applicant testified and did not call any witnesses. At Applicant's request, I kept the record open until April 14, 2023, for her to submit additional documentation. She timely submitted documentation that I admitted as AE GG through JJ , without objection. DOHA received the hearing transcript on April 13, 2023.

Findings of Fact

Applicant admitted all the SOR allegations in her Answer. She is 53 years old. She married in 2001 and has been widowed since September 2017. She has a 28-year-old stepchild. She previously owned a home that she purchased in July 2006 and sold in October 2018, as further discussed below. Since then, she has rented her residence. (Tr. at 22, 24, 32-36, 79; GE 1; AE A)

Applicant graduated from high school in 1988. She attended college but did not earn a degree. She has worked for various DOD contractors since approximately 1995. She was unemployed during the following periods: (1) from January to October 2010, due to a layoff; (2) from March 2011 to September 2011, after her contract expired; (3) from November 2013 to February 2014, at the conclusion of a temporary contract; and (4) from August 2014 to November 2014, at the conclusion of a temporary contract. She has worked as an auditor since July 2021. She has received numerous certifications. She was first granted a security clearance in approximately 1995. (Tr. at 6-9, 18-20, 23-24, 64-66, 68-72, 103-106, 114-115; GE 1; AE M, N, O)

The SOR alleged that Applicant had five delinquent consumer debts, totaling approximately \$102,023 (SOR ¶¶ 1.a-1.d, 1.f); a \$105 delinquent medical debt (SOR ¶ 1.e); and delinquent state taxes of \$4,449 for tax year (TY) 2010 (SOR ¶ 1.g). The SOR allegations are established by Applicant's admissions in her Answer; her October 2019 security clearance application (SCA); her April 2020 background interview; and credit bureau reports from February 2020, April 2021, January 2022, and June 2022. (GE 1-6; AE A, C)

Applicant attributed her financial difficulties to her spouse's six-month period of unemployment while he was in between contracts, followed by his sudden death in September 2017. Prior to his unemployment, he earned approximately \$15,000 monthly as an independent contractor for DOD, and he was responsible for the larger of their household expenses while she handled the smaller ones. During his period of unemployment, they exhausted their savings and obtained the credit card in SOR ¶ 1.a and the loans in SOR ¶¶ 1.b and 1.d to meet their financial obligations, with the intention of repaying them once he was re-employed. (Tr. at 20-42, 48, 50-53, 72-77, 92-96, 106-108, 113-114; GE 1-3; AE H-J, HH)

After her spouse's death, Applicant became solely responsible for their debt. She mistakenly believed he was on her life insurance policy with her employer. She continued to financially assist her stepchild. She timely paid her monthly mortgage of \$4,148 for two to three months. She voluntarily surrendered her car that she could no longer afford, as

further discussed below. She retained the services of a debt resolution company in June 2018 and entered a debt consolidation plan, for which she made eight payments of \$700 between June 2018 and September 2019, so that the company could negotiate with her creditors and settle her outstanding debts. She sold her home in October 2018, when she could no longer afford to pay her mortgage and was seven to eight months delinquent. She rented a home for two years at \$2,200 monthly. She elected to resolve her debts on her own because the debt resolution company took too long to settle or pay any of her debts, and she withdrew from the company's debt reduction program in September 2019. She lost her father in February 2020, and she has since helped her siblings care for their widowed mother. She subsequently rented a smaller home that provided a shorter commute to work and her family. (Tr. at 20-42, 48, 50-53, 72-79, 92-96, 106-108, 113-114; GE 1-3; AE H-J, HH)

SOR ¶ 1.a is a \$25,231 charged-off credit card. Applicant used this card to pay for basic living expenses when her spouse was unemployed and after his death. She made timely monthly payments of \$300 toward this card until 2018, when she could no longer afford to do so. She included this debt in her debt consolidation plan. After she withdrew from the plan, she contacted the creditor and entered a payment arrangement of \$200 monthly to resolve this debt. She made a payment of \$200 in April 2020. As of the date of the hearing, she had been in settlement discussions with the creditor, and she last made a payment of \$200 in August 2022. She stopped making payments because she was tackling her smaller debts before her larger ones. She intends to settle and pay this debt as she has the financial means to do so. (Tr. at 43, 47-53, 86-87, 108-113, 120; GE 1-6; AE C, AA, HH)

SOR ¶ 1.b is a \$12,438 charged-off personal loan. Applicant obtained this loan to pay her expenses when her spouse was unemployed. She made timely monthly payments of \$280 until 2018, when she could no longer afford to do so. She included this debt in her debt consolidation plan, and the debt resolution company settled this debt for \$7,244. Upon contacting the creditor in April 2020, she learned that the debt had been transferred to a collection company. She entered a \$100 monthly payment arrangement with the collection company, and she paid \$100 in April 2020, and two payments of \$100 in August 2022 and September 2022. As of the date of the hearing, she had been in settlement discussions with the creditor. She stopped making payments because she was addressing her smaller debts before her larger ones. She intends to settle and pay this debt as she has the financial means to do so. (Tr. at 53-55, 87, 116-117, 120; GE 2-5; AE C, Z, HH)

SOR ¶ 1.c is a \$2,099 charged-off credit card. Applicant used this credit card for miscellaneous items, such as gas, to try to rebuild her credit. She settled this debt for \$1,410 in April 2020, payable through a payment arrangement of \$1 due February 2019, and then 18 payments of \$74 monthly between March 2019 to September 2020. She has not made any payments to date but she intends to pay this debt as she has the financial means to do so. (Tr. at 43, 55-57, 87-88, 113-114; GE 2-6; AE C, BB, HH)

SOR ¶ 1.d concerns a \$1,317 personal loan in collection. Applicant obtained this loan in March 2018 to help pay her expenses when her spouse was unemployed. She

made a \$234 payment in May 2018, and then she could no longer afford to repay it. She negotiated a settlement with the creditor in February 2020 to make a one-time payment of \$4,700, and then monthly payments of \$183, until she paid the outstanding balance. She paid \$970 in February 2019, seven payments of \$182 to \$183 between March 2019 and October 2019, and two payments of \$2,179 and \$2,400 in February 2020. She paid this debt in July 2022. (Tr. at 57-58, 88-89, 117-119; GE 2-6; AE C, D, U)

SOR ¶ 1.e is a \$105 collection account in related to medical treatment Applicant received in the past. She was unaware of this debt until she received the SOR because she believed it was covered by her health insurance. She paid \$107 in April 2020 and resolved this debt. (Tr. at 58-59, 89; GE 1, 2, 6; AE E)

SOR ¶ 1.f is a \$60,938 balance due on Applicant's repossessed car. At the time of her spouse's passing, Applicant drove a used luxury sedan that she purchased in approximately 2015 or 2016, for which she paid \$738 monthly. In approximately December 2017, she traded in her sedan and leased a used \$90,000 luxury sports car. She timely paid her monthly payments of \$2,000 before voluntarily surrendering the car to the dealership in December 2018, so that she could obtain a sedan. The dealership would not let her out of her lease. She mistakenly believed that the lessor would forgive the outstanding balance on her lease once the car was sold. She contacted the lessor in April 2020 and entered a monthly payment arrangement of \$200 for six months, at which time the lessor would re-evaluate to determine future arrangements on the remaining due balance. Although this debt was reported as delinquent on the February 2020 credit bureau report, the January 2022 and June 2022 credit reports reflect that Applicant's outstanding balance remained \$60,938 and that Applicant was paying this account as agreed. She was tackling her smaller debts before her larger ones. She intends to settle and pay this debt as she has the financial means to do so. (Tr. at 37-41, 59-61, 79-86, 119-120; GE 2-6; AE C, F, W, II)

SOR ¶ 1.g is a delinquent state tax debt in the amount of \$4,449 that Applicant owes for TY 2010. This tax debt stemmed from an individual income tax lien for \$22,485 in business taxes filed against Applicant's spouse. The lien holder garnished her wages upon his death due to their joint tax filing status at the time of his death. Although the lien was released in October 2018 during the sale of her home, documentation from the state tax authority reflected that the outstanding balance as of December 2020 was \$4,449. Applicant's 2019 state income tax refund of \$38 was applied to her outstanding taxes for TY 2010. She did not owe any state income taxes for TY 2011 through 2019. She entered a payment arrangement of \$125 monthly for 21 months. As of January 2023, she had already made four out of 21 monthly payments, and her outstanding balance was \$2,316. She made another payment of \$125 in March 2023. (Tr. at 61-62, 89-91, 101; GE 1, 3; AE G, V, EE, FF)

Applicant expected to earn \$151,000 annually as of April 2023, an increase from her \$147,000 starting annual salary in July 2021. Her salary was approximately \$107,000 annually between 2018 and 2021. As of April 2023, her net monthly income was \$8,162, and her monthly expenses totaled \$6,142, which included her rent of \$2,448, a \$989 car payment, and payments toward SOR ¶¶ 1.a to 1.c, 1.f, and 1.g. She refinanced her car

loan for a lower interest rate in August 2022. She estimated her monthly net remainder to be \$400. She has a tax preparer who timely files her federal and state income tax returns annually, and she has been paying the IRS \$200 monthly for an unrecalled amount in outstanding taxes for tax year 2022. She had \$5,000 in her savings account as of the date of the hearing, and she tries to set aside \$500 monthly in savings. She intends to get back on track financially. She received financial counseling in January 2022 through her bank's financial advisors. On their advice, she obtained a credit card, with a \$250 maximum spending limit, to reestablish her credit. (Tr. at 37-41, 44-47, 59-72, 79-86, 91-92, 96-102, 107-108, 119-120; GE 2-4; AE C, F, K, L, N, W, X, CC, DD, GG, II, JJ)

Applicant's sister, and her former supervisor from approximately 2010 to 2011 and a friend of 17 years, both attested to Applicant's trustworthiness, reliability, and judgment. Applicant's previous supervisor from 2018 to 2020 lauded Applicant's work ethic, professionalism, dedication, and integrity. Her direct supervisor since May 2021 praised Applicant's excellent performance. Applicant's landlord of two years in 2022 described her as a reliable tenant. Applicant has received favorable performance evaluations. She comes from a military family, and she served as an advocate for the Veterans of Foreign Wars organization. (Tr. at 20-21, 66-67, 121-133; AE N, P, Q, R, S)

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 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of not being able to pay her debts. She also failed to timely pay her state income taxes for TY 2010. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Circumstances beyond Applicant's control, including her spouse's period of unemployment followed by his sudden death, contributed to her financial problems. Given the record as a whole, I find that she acted responsibly under her circumstances. After her spouse's passing in 2017, she attempted to pay her financial obligations on her own. When she could no longer do so, she retained the services of a debt resolution company in June 2018. She entered a debt consolidation plan that she paid into until September 2019, when she decided to pay her debts on her own because the company was taking too long to pay them on her behalf. She sold her home in October 2018 and downsized. Before the SOR, she began paying SOR ¶ 1.d; she paid SOR ¶ 1.e in April 2020; and she paid SOR ¶ 1.d in July 2022.

Applicant was in contact with the creditors to resolve SOR ¶¶ 1.a, 1.b, 1.c, 1.f, and 1.g in April 2020. She made a payment toward SOR ¶¶ 1.a and 1.b; and she entered payment arrangements for SOR ¶¶ 1.c and 1.f. She intends to pay these remaining debts as she has the financial means to do so, tackling the smaller ones first. As of the 2022 credit reports, SOR ¶ 1.f was reported in a favorable status, reflecting that Applicant was paying this account as agreed. In January 2023, she entered a payment arrangement to resolve her outstanding state taxes in SOR ¶ 1.g, and she made five payments of \$125 in accordance with that arrangement as of March 2023. She received financial counseling. With her recent pay increase, she has the means to continue resolving her remaining debts. She has responsibly addressed her debts within her means in light of circumstances that were beyond her control. She is not required to be debt free. She has demonstrated a meaningful track record of payments towards her debts sufficient for me to conclude that she will follow through on her plan to repay them. I find that her financial issues do not continue to cast doubt on her current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are established.

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 that Applicant has 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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a - 1.g: | 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