



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



In the matter of:)
)
) ISCR Case No. 21-01567
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

01/18/2023

Decision

MASON, Paul J., Administrative Judge:

Before her March 2021 Chapter 7 Bankruptcy discharge, Applicant had \$47,830 in delinquent debts. Four out of five of these debts became delinquent in 2019 due to her unemployment that began in April 2017. Her Chapter 7 Bankruptcy discharge and the absence of any more recent delinquent debts provides an adequate basis to resolve the financial considerations guideline in her favor. Eligibility for security clearance access is granted.

Statement of the Case

On July 7, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance required in her employment with a defense contractor. On August 17 and September 8, 2020, she provided two personal interviews (PSIs) with an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated August 23, 2021, detailing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.)

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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.

Applicant provided her answer on October 1, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 19, 2022, for a hearing on November 4, 2022. The hearing was held by TEAMS video teleconference as scheduled. I entered the Government's three exhibits (GE) 1-3 and Applicant's one exhibit (AE) A into evidence without objection. Applicant testified. Applicant's five post-hearing exhibits AE B-F were entered into evidence without objection. They include: (B), the complete Chapter 7 Bankruptcy petition with schedules; (C), Applicant's stated reasons for her financial problems and action taken to restore financial stability; (D), a budget dated October 21, 2022; (E), Applicant's credit score; and (F), an online credit counseling course. DOHA received the transcript (Tr.) on November 16, 2022. The record closed on November 22, 2022. The pages of GE 2, GE 3, and AE B display handwritten page numbers that may be cited in this decision.

Findings of Fact

There are five delinquent accounts, either charged off or in collection, that are alleged in the August 2021 SOR. The total amount of debt is approximately \$47,830. The debts became delinquent between July 2015 and November 2019. Applicant admitted that she owed the debts, and the Government credit bureau reports confirm her admission. Though she believes that her financial difficulties may be the reason for the denial of previous security clearance applications, no one ever told her exactly why she was denied a security clearance. (October 2021 answer to SOR; GE 2; GE 3; Tr. 10-11, 19)

Applicant is 47 years old. She is single with no children. She was living with her sister from September 2018 to April 2022, when she moved into a rental with a roommate. After completing high school, she collected some college credits but earned no degree. (GE 1 at 9-11; Tr. 6-9, 22)

Applicant has been employed as a financial analyst with her current employer since January 2020; this employment is the second time that she has worked for this company. From January 2018 to January 2020, she was an owner of an aesthetics organization directed at helping primarily individuals organize rooms and spaces within their homes. She also helped them pack and move household possessions if needed. The business generated about \$6,000 in 2018 and about \$8,000 in 2019. Applicant believes she is behind on federal taxes related to the business for tax year 2019 or 2020. When she discovered the business was not generating sufficient income, she decided to return to government contracting for better job security. (GE 1 at 13-21; GE 2; Tr. 8-11, 36, 38-39)

Though Applicant cited employment at a veteran's association from May 2014 to June 2018, she never worked for the association because she was unable to obtain a security clearance. As noted the preceding paragraph, Applicant's first employment with her current employer was from October 2011 to April 2017, when the contract ended. During this employment, she was classified as a junior systems analyst. (GE 1 at 13-21; GE 2; Tr. 8-11)

Applicant purchased a home in 2007. She lived there until 2012, when she began renting the dwelling. The monthly rent was \$100 to \$150 less than the monthly mortgage. She had no problems keeping the dwelling rented between 2012 and 2018, with occasional short periods when she cleaned the home after renters moved out and before new renters moved in. When Applicant became unemployed in 2017, she encountered increasing trouble paying the mortgage. In September 2019, the current tenants were not paying the rent regularly and Applicant was unable to pay the mortgage. With the property about to go into foreclosure, Applicant was granted a stay the foreclosure proceedings, allowing her time to sell the property and pay off the balance of the mortgage. Whatever profit Applicant made on the sale was absorbed in her refinancing of the mortgage on several occasions and renovations she made to the home. (Tr. 23-30)

When Applicant lost her job in April 2017, she managed to get by on her savings, her 401(k) retirement account, and financial help from her sister and mother. She exhausted her retirement account and received about \$600 a month from her family members in 2018. She was not as dependent on her family in 2019 because she was earning some income from her aesthetic organization. (GE 1 at 17-18; Tr. 32-34)

At the end of 2017, Applicant realized that she could no longer make payments on the SOR ¶ 1.a credit card. (The other listed accounts fell delinquent in the same fashion.) Though she provided no supporting documentation, she testified that she phoned the SOR ¶ 1.a creditor in February or March 2018 to negotiate payment arrangements. Without a steady income, she realized in a month or two that she could not sustain payment plans. She did not try to do anything until she had a source of income. She did not know what to do because she had never had financial problems like this. She always paid her debts on time. Applicant did not contact the SOR ¶ 1.a creditor again (or the other creditors) based on the advice of her attorney. (Tr. 42-46, 50)

In late 2018, Applicant's plan for dealing with her delinquent debt was to regain employment with her current employer. By resuming employment, she would again be able to have a regular paycheck, so that she could recover financially. When her current employer was awarded the contract, she thought she would start working immediately, but administrative missteps caused delays. She claimed that she was issued a security clearance that for some reason was transferred. Because of an administrative mistake, a reinvestigation of her security clearance was launched. As time passed, she applied for other positions in government contracting, or in administrative positions. After a few

months, she expanded her search and recalled sending three to five applications a week in 2018 and 2019. She did not begin working for her current employer until January 2020. (GE 1 at 36; Tr. 47-50)

After speaking with an attorney and a few creditors, Applicant concluded at the end of 2020 that a Chapter 7 bankruptcy petition was the best option because she had too much debt. She estimated the payments of \$900 a month to the creditors would make it difficult for her to pay her rent. (Tr. 55-57) Applicant filed her Chapter 7 petition in December 2020 and the listed debts were discharged in March 2021, about four months before the issuance of the SOR in August 2021. (AE A; AE B)

Though unsupported by documentation, Applicant claimed that she paid several debts with lower balances at some time before the Chapter 7 Bankruptcy proceeding (December 2020) to reduce the number of debts that she had outstanding. She learned that because she did not close the accounts when she paid them off, they remained listed in the bankruptcy. As an example, she claimed that she paid off the SOR ¶ 1.e debt before the account was discharged in the bankruptcy. In a phone conversation, this creditor informed her that the account was still listed as past due in the bankruptcy and in their records. Applicant ruminated about hiring an attorney to remove some of the paid off accounts from the bankruptcy. (Tr. 50-52) Her Chapter 7 petition shows that the debts of four unlisted creditors were discharged along with the listed creditors. (AE A; AE B at 20-24)

Applicant explained that she completed an online financial counseling course mandated by the bankruptcy court. Records show that she completed the course in November 2020. (AE F) There is no documentation to support her claim of receiving live financial counseling from an instructor in January 2021. As a part of the counseling, Applicant generated a budget. She noted that she has been using a budget for about 10 years. She generates the budget in a computer spreadsheet program. However, she deletes her budget every two months. Though Applicant claimed to have a written budget for the last couple of months, the budget that she submitted appears to be based on a \$1,974 paycheck that she received on October 21, 2022. The budget does not include the all the expenses that she identified during her testimony. She testified that her monthly rent was \$1,300, but her budget shows her monthly rent as \$1,100. While Applicant indicated that she paid off \$9,200 in loans she received from her sister and her mother in 2018 and 2019, her budget shows she apparently resumed borrowing from her mother for a rental deposit for her current residence. (Tr. 58-60-63, 65; 66-68; AE D)

The 2020 Government credit bureau report (CBR) shows that the SOR ¶ 1.c debt became delinquent in 2015. The other listed debts became delinquent in 2019. (GE 3 at 8-9) According to the CBR, Applicant has no other delinquent debts. There is no evidence showing that Applicant incurred any delinquent debt after March 2021. (GE 3 at 1-10) Realizing that her long period of unemployment and underemployment was

due to not having a degree, Applicant is resuming her education to pursue an online degree in business management. She is budgeting and saving her money. (AE C)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(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

Guideline F, 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.

A person's practice of responsibly managing her financial obligations is a private matter until evidence reveals that she is not paying her debts in a timely fashion. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government credit report (GE 3) establishes that the one of the five debts (SOR ¶ 1.c) became delinquent in 2015 and the other debts (SOR ¶¶ 1.a, 1.b, 1.d, and 1.e) in 2019. 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.

Applicant's debts started to fall delinquent about six years before her Chapter 7 bankruptcy discharge in March 2021. The debts are still considered recent because they were resolved through bankruptcy less than two years ago. Her accumulation of \$47,830 in delinquent debts raises lingering security concerns about her reliability and judgment. AG ¶ 20 (a) does not apply.

Applicant's unemployment from April 2017 to January 2020 was an unforeseen condition beyond her control and justifying mitigation under the first prong of AG ¶ 20(b). She decided to start her own business in 2018 to generate income while searching for employment unsuccessfully. She did not anticipate the lack of sufficient income would force her to close the business and return to government contracting in January 2020 for job stability. After evaluating her options in discussions with a lawyer, she decided to file a Chapter 7 bankruptcy petition in December 2020. Following her unemployment and underemployment from April 2017 to January 2020, the record furnishes sufficient evidence that she acted responsibly under the circumstances to

obtain a complete Chapter 7 discharge of the listed debts in March 2021. Applicant receives mitigation under AG ¶ 20(b).

AG ¶ 20(c) applies to Applicant's court-ordered financial counseling that she received in November 2020 as a part of the bankruptcy process and her problematic October 2022 budget. Although Applicant is not entitled to mitigation under the first prong of AG ¶ 20(d), her Chapter 7 bankruptcy discharge is a legally authorized means to extinguish the delinquent debt and obtain a fresh start under the circumstances of this case. See *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

Whole-Person Concept

I have examined the evidence under the specific guidelines 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 47 years old and has been employed by a defense contractor as a financial analyst since January 2020. Before her unemployment the underemployment from April 2017 to January 2020, she was working for this company almost six years. After providing her PSI in August 2020, she weighed her options for retiring the delinquent debt. She exercised sound judgment and financial responsibility by obtaining the Chapter 7 discharge before the SOR was issued in August 2021. She is resuming her education to achieve a degree in business management. Considering this case in light of the the specific conditions and the general factors of the whole-person concept, Applicant has mitigated the security concerns emanating 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.e:
Conclusion

For Applicant

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. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge