



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



In the matter of:)
)
) ISCR Case No. 13-01356
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Catie Young, Esq.

July 11, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had 35 delinquent debts totaling \$18,700, identified on the Statement of Reasons (SOR). Applicant is making payments on the majority of those debts through a credit counseling organization, in which she enrolled in November 2013. Applicant formally disputed all but one of the remaining delinquent accounts with the credit reporting agencies. Applicant is making a good-faith effort to pay or otherwise resolve her debts. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her electronic Security Clearance Application (e-QIP) on April 16, 2013. On February 26, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective after September 1, 2006.

Applicant answered the SOR (Answer) on April 24, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on May 23, 2014. A notice of hearing was issued to Applicant on May 27, 2014, scheduling a hearing for June 17, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, and Hearing Exhibit (HE) I, which were admitted without objection. Applicant testified on her own behalf, and offered Applicant's Exhibits (AE) A through W, which were admitted into the record without objection. Applicant requested that the record be left open to allow her to submit additional evidence and her request was granted. On July 1, 2014, Applicant presented additional exhibits, marked AE X through AE DD.¹ Department Counsel had no objections to AE X through AE DD, and they were admitted into the record. The record then closed. DOHA received the transcript of the hearing (Tr.) on June 24, 2014.

Findings of Fact

Applicant is 34 years old. She is divorced and has two minor children that reside out of state with their father. She has worked for a government contractor since April 2013 and seeks a security clearance in connection with that employment. She previously held a security clearance while on active duty with the Army from 1998 to 2002. She possesses an associate's degree. (GE 1; AE U; Tr. 29-39, 76.)

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified information. The SOR identified 35 delinquent debts totaling \$18,700. Applicant's debts appear in credit reports entered into evidence. Applicant admitted all of the debts as alleged in subparagraphs 1.a through 1.d, and 1.f through 1.hh. She denied subparagraphs 1.e and 1.ii. (Answer; GE 3; GE 4; GE 5.)

Applicant attributed her financial delinquencies to working minimum-wage jobs from 2007 to 2009, and the unexpected death of her boyfriend in 2008. During that same period, she required two surgeries and did not have adequate health insurance to cover the cost of those surgeries. Additionally, her daughter, which she had physical custody of at that time, required a surgery that was not fully covered by Tricare. The record reflects that Applicant experienced significant periods of unemployment including, October 2004 to October 2007; October 2008 to November 2009; January 2010 to May 2010; May 2011 to July 2011; and March 2012 to July 2012. (GE1; AE U; Tr. 58-59, 86-88.)

In November 2013, Applicant contacted a debt management company (DMC) to help her consolidate and repay debts. She makes monthly payments of \$684.17 to DMC. Her first payment was made December 12, 2013, and she is current on her

¹ Applicant's attorney mismarked these exhibits as AE V through AE BB. I renamed them to avoid having two exhibits marked AE V and AE W.

monthly payment arrangement. Her starting debt balance in November 2013 was \$21,720.46. As of April 24, 2014, her debt balance decreased to \$16,019.38. The DMC is making monthly payments on Applicant's behalf to the creditors identified in subparagraphs 1.b through 1.d, 1.g, 1.i through 1.u, 1.w through 1.y, and 1.aa through 1.ii. She is resolving those accounts in good faith through the DMC.

Applicant's remaining creditors were all contacted, but did not have records of her accounts. She testified she is willing to resolve the remaining accounts through the DMC if the creditors will accept payments. (GE 3; AE A; AE B; AE C; AE D; AE AA; AE BB; AE CC; AE Z; Tr. 47-57, 78-92.) Those six debts are as follows.

Allegation 1.a is for a delinquent medical debt in the amount of \$65. Applicant testified that she believes this debt is included in her debt management plan with DMC, but she failed to produce evidence to show this account is being resolved. (Tr. 47-48, 77.)

Applicant testified that the \$100 medical debt alleged in allegation 1.e was included in her medical debt listed with the DMC. However, she disputed this debt with the credit reporting agency by letter dated June 30, 2014. (AE X; Tr. 80.)

The \$1,000 debt identified in subparagraph 1.f was incurred when Applicant received an advance from a private lender based upon her expected income tax refund. That tax refund was garnished to repay student loans and Applicant became indebted to the lender. She testified that she contacted this creditor to establish a repayment plan but the creditor was unable to locate her account. Applicant wrote to the credit bureau and formally disputed this debt on June 30, 2014. (AE X; Tr. 50-51, 71, 82.)

Applicant is indebted on a delinquent telephone account in the approximate amount of \$1,464, as stated in subparagraphs 1.h. She testified that she contacted this creditor but that the company no longer has record of the accounts. Applicant wrote to the credit bureaus and disputed this debt on June 30, 2014. (AE X; Tr. 83.)

Applicant was indebted on another delinquent telephone account in the approximate amount of \$195, as stated in subparagraphs 1.v. She provided a letter from this creditor that indicated this account has been paid in full. (AE Y; Tr. 85.)

Applicant is indebted to a utility company in the amount of \$132, as alleged in subparagraph 1.z. Applicant testified that she contacted this creditor and the creditor was unable to locate her account. Applicant wrote to the credit bureaus and disputed this debt on June 30, 2014. (Tr. 85.)

Applicant's personal financial statement reflects that she has money left over after meeting monthly expenses and satisfying her monthly DMC payment. She intends to pay all valid debts in full. (GE 2; AE E; Tr. 48-50.)

Applicant is respected for her honesty, trustworthiness, and integrity by her friends, colleagues, and superiors. She has received several awards and training

certificates. During her service in the Navy, Applicant earned the Navy Good Conduct Medal and the National Defense Service Medal. She received an honorable discharge. (AE F through AE R; Tr. 30-33.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 national security." In reaching the 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, 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 clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. The 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 EO 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

The SOR alleges that Applicant incurred approximately \$18,700 in delinquent debt. The debts have been delinquent since approximately 2007. While Applicant recently began to address the debts, in its entirety, the Government has established its *prima facie* case against Applicant. The evidence shows Applicant’s “inability or unwillingness to satisfy” her debts from 2007 to 2013. She has an overall “history of not meeting financial obligations” during that time period.

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, including:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

The Appeal Board has held, “A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness.”² Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”³

Applicant’s ongoing efforts to address her debt in a meaningful manner show she has the judgment, reliability, trustworthiness, and ability to protect classified information. While she has not resolved every debt, she is making a good-faith effort to repay \$15,804 of her \$18,700 debt through the DMC. She disputed \$2,696 in debt by lodging formal disputes with the credit reporting agencies after the creditors found no records of the accounts, but is willing to resolve those debts if they are found to be valid. She paid one debt of \$195. Applicant failed to document that one \$65 debt was included in her debt management plan, but she credibly testified that she believes it was included. Her debts were incurred in 2007 and 2008 due to unfortunate circumstances beyond her control including unemployment, underemployment, the death of her boyfriend, and unexpected medical care. She has acted responsibly since December 2013, prior to receiving the SOR, when she began managing her debt. She now has an income that allows her to live within her means and pay off debt. Future indebtedness is unlikely to recur. Her financial history, and remaining debt, does not cast doubt on her current reliability, trustworthiness, or good judgment. There are clear indications that the problem is being resolved or is under control. All five mitigating conditions under AG ¶ 20 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(a):

² ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

³ AG ¶ 2(a)

(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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a hardworking and dedicated employee who performs well on the job. She served in the Army from 1998 to 2002 and received an honorable discharge. She is diligently addressing her debts through the DMC or formal disputes. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude 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:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a through 1.ii:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge