



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-03025
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

Remand Decision

HOGAN, Erin C., Administrative Judge:

On July 25, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant timely answered the SOR on August 23, 2014, and requested that her case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on March 13, 2015. The FORM was forwarded to Applicant on April 22, 2015. Applicant received the FORM on April 27, 2015. She had 30 days to submit a response to the FORM. Applicant did not submit a response to the FORM. On July 30, 2015, the FORM was forwarded to the hearing office and was assigned to me on July 31, 2015.

A decision was issued on September 3, 2015. On October 28, 2015, the DOHA Appeal Board remanded the decision because some of Applicant's documents were not placed in the case file. The FORM contained Items 1-5 which are admitted. Applicant's additional documents that were not placed in the case file were sent in response to the SOR. They are admitted as Item 6. Upon receiving the remand decision, I issued an order reopening the record to allow Applicant to submit additional documents. (Hearing Exhibit (HE) I) Applicant timely submitted two documents which were admitted as Items 7 - 8. An additional extension was granted until January 7, 2016. Applicant timely submitted several documents which are admitted as Items 9 - 10. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admits to all of the SOR allegations. (Item 1)

Applicant is a 33-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. Applicant has been employed with the company since March 2013. She also has a part-time job. She has a high school diploma, and some college. She separated from her husband in September 2009. She filed for divorce in April 2012. The divorce became final on November 20, 2015. She has a 16-year-old son. (Item 2, Item 7 at 2-3; Item 8)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on September 26, 2013. (Item 2) A subsequent background investigation revealed that Applicant had 18 delinquent debts, with a total approximate balance of \$22,354. (Item 3; Item 4)

In response to the SOR, Applicant indicates that most of the unpaid debts are involved in divorce litigation. Her attorney provided a letter indicating the divorce proceedings took longer because Applicant's husband refused to cooperate in discovery. The divorce and a property settlement were completed on November 20, 2015. (Item 7 at 2-3; Item 8)

Applicant also mentioned in response to the SOR that she is in the process of rehabilitating the student loan accounts alleged in SOR ¶¶ 1.a – 1.e and 1.o. After ten months of payments, the student loan accounts will no longer be in default. The student loan accounts are the subject of litigation in her divorce. She also stated the debts alleged in SOR ¶¶ 1.i, 1.k – 1.r are either paid in full or she is making payment arrangements. (Item 2)

Status of the Delinquent Debts:

SOR ¶¶ 1.a – 1.e and 1.o: delinquent student loan accounts in the amount of \$5,343; \$3,225; \$2,866; \$2,576, \$1,801; and \$512. (Item 3 at 3; Item 4 at 2) Department Counsel obtained an updated credit report on March 10, 2015, which indicated that

Applicant has brought all of her student loan accounts current. (Item 5 at 2-7) Applicant submitted a credit report, dated May 7, 2015, which also verifies the student loan accounts are consolidated and current. (Item 6 at 7 – 42) Applicant successfully rehabilitated her delinquent student loans.

SOR ¶ 1.f: \$1,200 medical account placed for collection in August 2012. (Item 3 at 8; Item 4 at 2) Applicant states that she has a payment arrangement for this account. She did not provide the specifics of the payment arrangement. She also mentions that this is a subject of her divorce litigation. The most recent credit report dated March 10, 2015, lists this debt as delinquent with a \$1,200 balance. (Item 2 at 1; Item 5 at 2) In her additional submission, Applicant claims she was unable to contact the creditor and now formally disputes this account. (Item 7 at 1) Applicant was provided the current collection agency collecting this account. She settled the debt for \$360. The debt is resolved. (Item 6 at 1, Item 10 at 10)

SOR ¶ 1.g: \$686 delinquent cell phone account placed for collection in February 2010. (Item 3 at 9; Item 4 at 2) Applicant claims that this is for a cell phone that her ex-husband used even though the account was in her name. She states the account is a subject of her divorce litigation. The March 2015 credit report lists the debt as unpaid and the balance remains at \$686. (Item 2 at 1; Item 5 at 1) In the property settlement agreement, Applicant's husband was ordered to pay Applicant \$1,500 cash. Applicant states that once she receives this money, she will pay this bill. (Item 8 at 7) Applicant's ex-husband did not pay the cash settlement as directed by the court. As a result, Applicant contacted the creditor and settled the account for \$343.16. She will pursue contempt proceedings against her ex-husband, but wanted to settle this account. The debt is resolved. (Item 6 at 1, 20; Item 9 at 1, 20)

SOR ¶ 1.h: \$430 delinquent water bill placed for collection in May 2009. (Item 3 at 9; Item 4 at 2) Applicant mentions that this account was for water service for her marital residence. The bill was in her name. When she moved out, her husband was to transfer the bill to his name. He did not transfer the account and did not pay the bill. This account is a subject of her divorce litigation. (Item 2 at 1) The March 2015 credit report lists the debt as unpaid and the balance remains at \$430. (Item 5 at 2) In the property settlement agreement, Applicant's husband was ordered to pay Applicant \$1,500 cash. Applicant states that once she receives this money, she will pay this bill. (Item 8 at 7) Applicant's husband did not pay the cash settlement as directed by the court. As a result, Applicant contacted the creditor and settled the account for \$429.70. She will pursue contempt proceedings against her ex-husband, but wanted to settle this account. Debt is resolved. (Item 9 at 1, 6-8, 19)

SOR ¶ 1.i: credit card account with a balance of \$371, past due in the amount of \$53. (Item 4 at 2). Applicant provided proof that this account was settled for \$311.15. The debt is resolved. (Item 7 at 4, Item 9 at 9)

SOR ¶¶ 1.j and 1.l: convenience store debt for insufficient funds checks written in July 2008 in the amounts of \$282 and \$145. (Item 4 at 2; Item 5 at 2) Applicant disputes

these debts. She claims her ex-husband forged the checks in her name. The debts are the subject of her divorce litigation. (Item 2 at 2) The March 2015 credit report lists both accounts as remaining past due. (Item 5 at 2) In her November submissions, Applicant claims these accounts are paid and closed. She states they are no longer on her credit report. (AE 7 at 1)

SOR ¶ 1.k: \$228 medical account placed for collection in May 2010. (Item 3 at 10; Item 4 at 2) The debt is paid in full. (Item 7 at 5; Item 9 at 10)

SOR ¶ 1.m: \$99 medical account placed for collection. (Item 4 at 2). Applicant claims this debt is currently paid in full. She did not provide documentation verifying that the debt was paid. (Item 2 at 2) The debt is not listed on the March 2015 credit report. (Item 5) Applicant said she disputed this debt and the account was removed from her credit report. (Item 7 at 1)

SOR ¶ 1.n: \$29 student loan account placed for collection in April 2012. (Item 3 at 4; Item 4 at 2). The debt is paid in full. (Item 2 at 2; Item 7 at 6; Item 9 at 11)

SOR ¶ 1.p: \$1,803 delinquent debt placed for collection in May 2011. (Item 3 at 8) Applicant claims that payment arrangements were set up for this account. The debt is paid in full. (Item 2 at 2; Item 5; Item 7 at 7-10; Item 9 at 12-16)

SOR ¶ 1.q: \$436 medical account placed for collection in January 2013. (Item 3 at 9). The debt is paid in full. (Item 2 at 2; Item 5; Item 7 at 11; Item 9 at 17)

SOR ¶ 1.r: \$322 medical account placed for collection in March 2013. (Item 3 at 9). The debt is paid in full. (Item 2 at 2; Item 5; Item 7 at 12; Item 9 at 18)

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 must be considered when 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, these guidelines are applied 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(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 this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 for 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 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 Executive Order 10865 provides that 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 relating to the guideline 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial

obligations) apply to Applicant's case. Applicant incurred numerous delinquent debts that she has been unable or unwilling to pay over the past several years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant's case.

AG ¶ 20(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) applies. Applicant's financial problems were partially caused by lengthy divorce proceedings. Applicant developed a plan to resolve her delinquent debts and has resolved most of her delinquent accounts. Applicant's actions demonstrate that she is resolving her delinquent accounts and that she is reliable, trustworthy, and has good judgment.

AG ¶ 20(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) applies because Applicant's separation and divorce complicated matters for her. Her ex-husband was not cooperative and her divorce took about six years to complete. Applicant developed a plan to resolve her delinquent accounts. I conclude that she acted responsibly under the circumstances because she provided proof that she developed a plan to resolve her debts and she has resolved most of the delinquent accounts.

AG ¶ 20(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) applies. While there is no evidence that Applicant received financial counseling, she has rehabilitated her student loans, and has resolved the majority of her delinquent accounts. Applicant's financial situation is being resolved.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.a – 1.e, and 1.o because proof was provided that her student loans were rehabilitated. SOR ¶¶ 1.f – 1.i, 1.k, and 1.n – 1.r are found for Applicant because Applicant provided proof the debts were resolved. Applicant is making a good-faith effort to resolve the delinquent accounts alleged in the SOR.

AG ¶ 20(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) applies with respect to the debts alleged in SOR ¶¶ 1.j, 1.l and 1.m.

Based on the evidence in the case file, Applicant has provided sufficient evidence to mitigate the concerns raised under financial considerations.

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):

(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 considered Applicant's separation and pending divorce partially contributed to her financial problems. Applicant's history of financial problems initially raised doubts about her ability to handle and protect classified information. However, she has demonstrated she had a plan to resolve her delinquent accounts and she successfully followed the plan. Most of her delinquent accounts are resolved. I find Applicant mitigated the concerns raised under 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.r:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge