



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



In the matter of:)	
)	
)	ISCR Case No. 14-01279
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esq., Department Counsel
For Applicant: *Pro se*

02/04/2015

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but she did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 13, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant responded to the SOR on July 8, 2014, and requested a hearing before an administrative judge. The case was assigned to other administrative judges on November 4, 2014, and December 4, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 12, 2014, scheduling the

hearing for November 25, 2014. The hearing was continued at Applicant's request, and another notice of hearing was issued on December 8, 2014, scheduling the hearing for January 15, 2015. The case was assigned to me on January 14, 2015. DOHA received the hearing transcript (Tr.) on January 26, 2015.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and called a witness, but she did not submit any documentary evidence. The record was held open for Applicant to submit additional information. She submitted documents that were marked Applicant's Exhibits (AE) A through I and admitted without objection.

Motion to Amend SOR

Department Counsel moved to amend the SOR by withdrawing the allegations in SOR ¶¶ 1.b and 1.c. The motion was granted without objection.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. She has worked for her current employer since December 2012. She has an associate's degree that was awarded in 2009. She married in 1999 and divorced in 2012. She has an adult child and two minor children.¹

The SOR alleges a \$10,615 deficiency owed on a car loan after the car was repossessed (SOR ¶ 1.e), a \$10,570 judgment awarded to a collection company that acquired the deficiency balance on a car loan (SOR ¶ 1.a), a \$1,374 state tax lien (SOR ¶ 1.b), a \$5,457 federal tax lien (SOR ¶ 1.c), 4 defaulted student loans totaling \$17,992 (SOR ¶¶ 1.m-1.p), 12 delinquent medical debts totaling about \$4,100 (SOR ¶¶ 1.d, 1.h-1.k, 1.t, 1.v, 1.w, 1.y, 1.z, 1.bb), and 8 miscellaneous delinquent debts totaling about \$3,370. Applicant denied owing five medical debts (SOR ¶¶ 1.t, 1.v, 1.w, 1.y, and 1.z). She admitted owing the remaining debts, but she stated that the tax liens were paid, and that she paid the debts alleged in SOR ¶¶ 1.aa and 1.bb. Each debt is listed on at least one credit report.

Applicant attributed her financial problems to her ex-husband's failure to manage the family's finances while they were married, and his failure to pay his share of the marital debt after they separated and divorced. She stated that her ex-husband rarely worked while they were married, and he is currently unemployed. Applicant has custody of the children, and her ex-husband does not pay child support. Applicant was also unemployed for an extended period from about 2008 to 2009.²

¹ Tr. at 21-22, 29; GE 1.

² Tr. at 22-23, 53; Applicant's response to SOR; GE 1.

Applicant testified that the \$10,615 deficiency owed on a car loan after the car was repossessed (SOR ¶ 1.e) and the \$10,570 judgment awarded in 2008 to a collection company for the deficiency balance on a car loan (SOR ¶ 1.a) represent the same debt, but the evidence does not support that assertion. The credit reports list two different creditors. In her response to the SOR, Applicant wrote that the judgment was for “a car that was totaled in 2003.” A credit report from 2005 lists a car loan that had been repossessed with a balance of \$10,571. The creditor for the car loan is the plaintiff identified in the 2008 judgment. Applicant wrote in her SOR response that the SOR ¶ 1.e debt was “from a vehicle that [her] ex-husband and [she] purchased that was defective and [she] voluntarily returned the vehicle.” The 2013 credit report lists this debt as being opened in 2006 with a date of last action of July 2008. SOR ¶ 1.a and SOR ¶ 1.e allege two separate and distinct debts. There have been no payments made toward either debt.³

The Internal Revenue Service (IRS) filed a \$5,457 tax lien (SOR ¶ 1.c) against Applicant in February 2005. The delinquent taxes were paid through recoupment of Applicant’s income tax refund, and the tax lien was released in December 2009. Applicant’s state filed a \$1,374 lien (SOR ¶ 1.b) against her in September 2009. The delinquent debt was paid, and the lien was released in July 2013.⁴

Applicant has multiple outstanding student loans. On January 20, 2015, Applicant entered into a rehabilitation agreement with the organization servicing six of her student loans, including the four loans alleged in the SOR. The agreement indicates that two of the loans were disbursed in 2003, two were disbursed in 2004, and two were disbursed in 2009. The balance of the loans in January 2015 was \$35,654. There is no indication that Applicant paid anything toward her student loans before January 2015. She stated that she was unaware the loans were in default because the lender never contacted her to ask her to begin repaying her loans. Under the loan rehabilitation agreement, Applicant has to pay \$5 per month for nine months, at which time her loans will be considered rehabilitated and come out of default. Applicant established that she made the first \$5 payment in January 2015.⁵

Applicant stated that the medical debts alleged in SOR ¶¶ 1.d and 1.h through 1.l resulted from her daughter being involved in a school bus accident in 2014. Her daughter is represented by an attorney. The debts will be paid after the legal process has run its course. Applicant denied owing five medical debts (SOR ¶¶ 1.t, 1.v, 1.w, 1.y, and 1.z). She stated that she had medical insurance, and the bills should have been paid.⁶

³ Tr. at 26-27; Applicant’s response to 2014 LOI; GE 2-5.

⁴ Tr. at 27-29, 34; Applicant’s response to SOR; GE 6. Department Counsel withdrew SOR ¶¶ 1.b and 1.c.

⁵ Tr. at 34-36, 48-49; Applicant’s response to SOR; GE 2, 3; AE A, F, I.

⁶ Tr. at 29-32, 42-44; Applicant’s response to SOR; AE C.

Applicant testified that she settled the \$750 debt alleged in SOR ¶ 1.q for \$200, but she could not find proof because her house was burglarized. In her post-hearing submission, she submitted a settlement offer dated January 13, 2015, in which the creditor agreed to accept payments of \$19 per month for five months in settlement of the debt. Applicant made the first payment on January 24, 2015. She settled and paid the \$130 debt to a telecommunications company as alleged in SOR ¶ 1.s for \$25.⁷

In her response to the SOR and during her testimony, Applicant stated that she paid the \$93 debt to a book club alleged in SOR ¶ 1.aa and the \$48 medical debt alleged in SOR ¶ 1.bb through money orders. In her post-hearing submission, she provided a copy of a \$93 money order dated January 24, 2015, to the collection company handling the book club debt. Applicant paid the \$48 medical debt alleged SOR ¶ 1.bb on January 24, 2015.⁸

Applicant stated that she is committed to addressing all her delinquent debts. She anticipates a large tax refund, which she stated will be used to pay debts. She testified that she has not received formal financial counseling, but she also stated that she “work[ed] with a debt consolidator/counselor to assist [her] in clearing [her] debt.”⁹

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2013. Under the financial questions, she did not report any adverse matter. She denied intentionally falsifying the SF 86. Her explanation was convoluted but credible. Her approach to completing the SF 86 reflected the same disregard that she showed her finances.¹⁰ Having considered all the evidence, I find that she did not intentionally falsify the SF 86.

A senior person at the military facility where Applicant works testified that Applicant is “an exceptional employee in just about every way you could hope.” He praised Applicant for her judgment, reliability, and trustworthiness.¹¹

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.

⁷ Tr. at 37-40; Applicant’s response to SOR; GE 5; AE A, D, E, G.

⁸ Tr. at 44-45; Applicant’s response to SOR; AE G.

⁹ Tr. at 32-34, 53; Applicant’s response to SOR.

¹⁰ Tr. at 46-55; Applicant’s response to SOR; GE 1.

¹¹ Tr. at 13-20.

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(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."

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 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 of 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. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate 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, 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.

Applicant attributed her financial problems to her divorce and the actions of her ex-husband. She was also unemployed for an extended period from about 2008 to 2009. Those events were beyond her control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant established that the debts alleged in SOR ¶¶ 1.s, 1.aa, and 1.bb were paid or settled for a total amount of \$166. Those allegations are mitigated. She has a valid explanation for why many of her medical debts were not paid. Her medical debts do not reflect "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations." SOR ¶¶ 1.d, 1.h-1.k, 1.t, 1.v, 1.w, 1.y, and 1.z are mitigated.

Applicant recently entered into a rehabilitation agreement for six of her student loans, including the four loans alleged in the SOR. The balance of those six loans is more than \$35,000. Applicant only has to pay \$5 per month for nine months. The loans will then be rehabilitated, but she will have to actually start paying the loans. She also recently agreed to settle another debt, and she made the first \$20 payment. Applicant's testimony about some of her debts was contradicted by the evidence. For example, she testified that two of the debts were paid, but those debts were not paid until after the hearing. She still has an extensive amount of debts to be addressed.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I am not convinced that Applicant has a viable plan to resolve her financial problems. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d), and 20(e) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. I find that financial considerations security concerns remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

There is insufficient evidence for a determination that Applicant intentionally provided false information on her SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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(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 have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's character evidence and her excellent job performance. I also considered the circumstances that led to Applicant's financial problems. However, her finances have been in disarray for years. She completely ignored her student loans until after the SOR was issued. She has taken some steps toward remedying her financial problems, but she still has far to go. I am also concerned that some of her statements at the hearing were contradicted by the evidence.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but she did not mitigate 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:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	Withdrawn
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraphs 1.h-1.l:	For Applicant
Subparagraphs 1.m-1.r:	Against Applicant
Subparagraphs 1.s-1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraphs 1.v-1.w:	For Applicant
Subparagraph 1.x:	Against Applicant
Subparagraphs 1.y-1.bb:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge