



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



In the matter of:)	
)	
)	ISCR Case No. 14-01533
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Jacob T. Ranish, Esq.

05/04/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On August 5, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 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 in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2015. A notice of hearing was issued on March 7, 2016, scheduling the hearing for April 5, 2016. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-H at the hearing which were admitted into evidence. I kept the record open until April 22, 2016, and exhibits (AX I-L) were entered into the record without objection. The transcript was received on April 13, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted all the debts, except two debts in the SOR allegations under Guideline F. She provided explanations for each alleged debt.

Applicant is 42 years old. She graduated from high school in 1992. She lived abroad with her husband. After they divorced, she returned to the United States in 1994. She worked in various jobs. She served in the United States Marine Corps from 1997 until 2002. She served on active duty for five years and an additional three years of inactive duty. She receives VA disability compensation due to injuries received while on active duty. She received an honorable discharge. She obtained her associate's degree in 2007. Applicant is divorced and has no children. She has held a security clearance for almost 19 years. She completed a security clearance application in 2013. (GX 1) She has two jobs at the present time.(Tr. 31) She has been with her current full-time employer since 2016. (Tr. 69)

Applicant's work as a contractor has been sporadic. After leaving the military in 2002, she worked for various Federal contractors but was unemployed in 2003. In 2010, Applicant was employed full time and earned a salary of about \$55,000. When she left that position, she earned about \$61,000. (Tr. 19) In 2010, she bought her first home. She acknowledged that there were hidden costs in owning a home. She realized that she would need to supplement her income. She decided to work as a contractor in Iraq from January 2011 until May 2012. (Tr. 22) She earned about \$115,000 while working in Iraq. She returned to the United States due to base closings and the drawdown on troops.

When Applicant returned from Iraq, she could not find full-time permanent employment. She was diligent in her job search and networking with a resource management company. She applied for numerous positions. She tried to return to her old employer, but they had no work. At that point, she applied for unemployment. Apparently she filed for unemployment in the wrong state and had to return about \$3,000, which she paid. She was unemployed from May 2012 until October 2012. She lived on her VA disability, her savings, and financial assistance from the state. (Tr. 26) However, she could not maintain her expenses and acquired debt.

In October 2012, Applicant obtained a job with a technology company doing Information Technology (IT) support. She earned \$65,000 a year. However, in 2014, her mother became suddenly ill and rushed to the hospital. She was diagnosed with cancer. Applicant had to go home to help care for her mother. So in 2014, after exhausting her accrued leave, she had to take unpaid leave. (Tr. 28) Applicant's mother was retired and living on a fixed income. Applicant helped her mother with some expenses. She did not pay some of her own bills in order to help her ill mother. (Tr. 30) In 2015, she accepted one position that did not pay much money. She was then unemployed from December 2015 to March 2016. (Tr. 69)

The SOR alleges 11 delinquent debts, which consist of student loans, collection accounts, a medical account, and a past-due mortgage account. The total amount of indebtedness is approximately \$58,000.

Applicant did not ignore her debts, but prioritized things. She did not want to lose her home, but she wanted to keep her home. She took a full-time job earning \$60,000 in 2015. Her-part time job pays her about \$30 an hour. At this point, she does has a net monthly remainder of about \$1,600.

As to the student loan accounts in SOR 1.a (\$5,209) and 1.b (\$4,595), Applicant had consolidated her student loans and believed other loans were in forbearance. She learned of these two accounts during the security investigation. She contacted the company who bought the student loans. She will be in a payment plan with them. (AX A, B) She will pay \$56.75 a month for the student loan in 1.a, and she will pay \$50.41 a month for the student loan in 1.b.

As to SOR allegation 1.c, for a collection account in the amount of \$2,201, she denies this account and has filed a formal dispute. She tried to have a community service find the address but she has not been successful. It is for furniture and she maintains that she has called the three credit bureau reporters but she has no information about the account. (Tr. 36) It is no longer listed on her latest credit report. (GX 5)

Applicant presented a document from the account in SOR 1.d, that shows she has been in a payment plan since 2012. She made her last payment on April 12, 2016. The original amount was \$525. The statement shows a zero balance. (AX K)

Applicant admitted the debt in SOR 1.e for a collection account in the amount of \$231. The account was paid in 2014 in total. (AX L)

As to the debt in SOR 1.f. for a past-due amount of \$41,756 on a mortgage account opened in 2010, Applicant obtained a loan modification when she was working. However, when she became unemployed in December 2015, and only had a part-time job, she could not maintain a loan modification. She contacted the bank, Making Home Affordable Mortgage Assistance Program (HOPE) and the VA for assistance. Applicant noted that for some reasons she had to request the modification five times. She believes they lost some of the paperwork. (Tr. 51) The home was scheduled for foreclosure in late April 2016. Applicant submitted a letter from her VA loan officer, dated April 6, 2016, that requested a delay of 60 days so that the loan modification can be considered. They expect a favorable response. (AX I)

As to the debt in SOR 1.g for a medical collection account in the amount of \$1,937, the debt is in repayment status. Applicant submitted documentation that an automated payment plan has been in effect since 2015. She makes a monthly payment of \$51.20 (AX B)

As to the debt in SOR 1.h for a phone account in the amount of \$679, Applicant submitted documentation that shows a zero balance. This was for a cell phone carrier while Applicant was in Iraq. Her service was suspended while she was out of the country. When the company failed to suspend service, they made an error. It is resolved. (AX J)

As to the debt in SOR 1.i for a phone account in collection for \$599, Applicant disputed the account because she has active service with the company. She submitted a formal dispute letter that she never owed such a debt, and a resolution response that was favorable to Applicant was received. (AX C)

As to the debt in SOR 1.j for a collection account for a mobile phone in the amount of \$590, Applicant formally disputes the debt. She provided documentation of the dispute letter. (AX D)

As to the medical collection account in SOR 1.k in the amount of \$622, Applicant submitted documentation that the balance was paid. (AX E)

Applicant received financial counseling in 2016. She presented a certificate of completion. (AX F) She understands the credit reporting system and has a budget and income to address her debts. (Tr. 44) She is saving money and purchasing an unemployment insurance policy for any other unemployment issues.

She volunteers in church and is active in many community activities. She also sponsors activities for the homeless. She visits homes for the elderly at least once a month and helps to minister to them. (Tr. 19)

Applicant submitted four letters of recommendation. (AX G) Each attests to the fact that Applicant is reliable and trustworthy. One letter noted that she works well within diverse environments. A former co-worker of ten years notes that Applicant performs all duties required to protect the interests of the U.S. Government. A current colleague describes Applicant as a responsible person. She is aware of the financial security concern issues and knows that Applicant does not live an extravagant lifestyle or live beyond her means. (AX G)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's credit reports confirm delinquent debts, a past-due mortgage loan, and collection accounts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant is in the process of modifying her home mortgage loan. She has addressed all the debts and disputes one. Financial Considerations Mitigating Condition (FC MC) 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) partially applies.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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. Applicant had several bouts of unemployment or underemployment over the years. She currently works two jobs and went to Iraq to supplement her income, so that she could maintain her home. She helped her ill mother. She tried to prioritize accounts and has now either paid, settled, or made recent payment arrangements for the debts.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant's student loans are in forbearance. She has paid or addressed all debts in the SOR. She obtained a second job to pay bills. She is in the final step of modifying her mortgage loan. She has now paid bills and addressed all debts. She received financial counseling. FC MC 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.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 42 years old. She served in the United States Marine Corps and received an honorable discharge and VA disability for her service. She has held a security clearance for almost 19 years. She had several periods of unemployment. She helped her ill mother financially by taking time from work with unpaid leave. She bought a house in 2010, and learned that she needed to supplement her income to address all the her expenses. She went to Iraq as a contractor to make more money. She always made efforts to find work and has taken various temporary jobs. Her unemployment and underemployment contributed to her financial problems. She now works two jobs. She provided sufficient information that she has paid or settled her debts. She is in the process of modifying her mortgage loan. She has payment plans for the debts that she has not paid or settled. She disputed one debt.

The issue is not simply whether all her debts are paid – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. Applicant persuaded me that she refuted or mitigated the Government's case concerning the financial considerations security concerns. She has carried her burden of proof.

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 :	FOR APPLICANT
Subparagraphs 1.a-1k:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge