



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



In the matter of:)	
)	
)	ISCR Case No. 14-01926
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

05/29/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Applicant’s financial problems were not caused by irresponsible, reckless, or negligent behavior. Although Applicant still owes a significant amount of delinquent debt, she is making a good-faith effort to repay her creditors. Clearance is granted.

Statement of the Case

On July 1, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² At the hearing, convened on February 10, 2015, I admitted Government's Exhibits (GE) 1 through 3, without objection. After the hearing, Applicant submitted Applicant's Exhibits (AE) A and B, which were also admitted without objection.³ I received the transcript (Tr.) on February 20, 2015.

Findings of Fact

Applicant, 52, has worked for a federal contractor for 30 years. She has continuously held a security clearance at various levels during her employment. On her most recent security clearance application dated October 2013, Applicant disclosed that she had experienced delinquent accounts in the previous seven years. The ensuing investigation established that Applicant is indebted to 12 creditors for approximately \$60,000.⁴

Applicant's financial problems began toward the end of 2009. For the previous 25 years, Applicant consistently worked 72 hours per week. In addition to her base hourly wage for 40 hours of work, Applicant earned one-and-a-half times her base pay on Saturdays and double her base pay on Sundays. Over the years, Applicant grew to rely on the overtime income. Unexpectedly, at the end of 2009, the overtime hours stopped. Applicant then supplemented her income with a part-time job at a department store, earning \$10 per hour. However, she started to have difficulty meeting all of her financial obligations.⁵

In January 2010, Applicant was the victim of a robbery and brutal beating. Afterwards, Applicant was scared to walk to her car alone at night as she left the department store. She quit and tried to find other suitable part time employment but was unable to do so. Without the income from her second job, Applicant's finances continued to deteriorate and she fell further behind on her bills. Between 2009 and 2010, the largest of Applicant's debts, a student loan (SOR ¶ 1.f) and a real estate mortgage (SOR ¶ 1.a), became delinquent. Applicant refinanced the mortgage hoping to secure a lower payment. After paying closing costs on the refinanced loan, the monthly payment decreased by only \$6. Applicant stopped paying the mortgage in December 2010. In August 2011, the mortgage lender won a judgment against

² The Government's discovery letter, dated October 15, 2014, is appended to the record as Hearing Exhibit (HE) I.

³ The e-mails regarding the admissibility of the applicant's exhibits are included in the record as HE II.

⁴ Tr. 17-18; GE 1-3.

⁵ Tr. 19, 51, 57-58.

Applicant for \$39,000, including court costs and attorney fees. The balance due continues to accrue interest.⁶

When Applicant's employer began offering overtime hours again in 2011, Applicant started to address her delinquent debts. She made payment arrangements with her student loan lender to repay the \$16,000 loan through an allotment from her paycheck. She paid off the student loan account in March 2012.⁷

In October 2011, Applicant underwent surgery for a routine joint-replacement. However, she experienced complications that resulted in a permanent injury. From October to December 2011, Applicant could not work. She received disability income at 60% of her gross base pay. She borrowed from her retirement savings to help make ends meet. In November 2011, the mortgage lender began enforcement on the judgment, garnishing 25% of Applicant's bi-weekly income.⁸

Applicant returned to work as soon as she was physically able and worked as many overtime hours as her health allowed. After the garnishment and allotment for her student loan were deducted from her pay, Applicant brought home between \$800 and \$1000 each pay period, a decrease of almost \$1200 per month. Despite her best efforts, Applicant continued to incur delinquent debt. She voluntarily surrendered her vehicle to the lender when she became unable to drive her car because of the injury she suffered as a result of the surgery. The auto loan had a deficiency balance of \$8,000, which Applicant could not pay. (SOR ¶ 1.b) She offered the lender a good-faith payment of \$50 per month until the mortgage garnishment was satisfied, but the creditor rejected her offer. She also incurred \$13,000 in delinquent debt related to the lengthy hospital stay after her surgery (SOR ¶ 1.i).⁹

Applicant intends to repay her creditors, but does not currently have the means to do so. To date, she has paid approximately \$34,000 via garnishment on the mortgage loan, and has a \$8,900 remaining balance. Applicant believes that the garnishment will be resolved this year, allowing her to begin paying the deficiency balance on the auto loan. She is in the process of disputing the hospital bill. She believes that the bill is too high for the standard of care that she received. The remaining SOR debts, for seven consumer credit accounts (SOR ¶¶ 1.c, 1.d-e, and 1.g-k)¹⁰ total approximately \$1,700 and remain unresolved.¹¹

⁶ Tr. 19-20, 27, 47, 58-62; Answer.

⁷ Tr. 20, 28-31.

⁸ Tr. 23-24, 66-67.

⁹ Tr. 21-22, 32-34.

¹⁰ The debts alleged in SOR ¶¶ 1.i-j are duplicate accounts. According, the debt alleged in SOR ¶ 1.j is resolved in Applicant's favor.

¹¹ Tr. 25, 34-37; AE A-B; Answer.

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.

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." 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 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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”¹² Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant owes \$79,000 on 12 delinquent accounts.¹³ Applicant’s security clearance application and the credit reports in the record establish the government’s *prima facie* case. Applicant has demonstrated an inability to pay her bills and a history of financial problems resulting in unresolved delinquent debts.¹⁴ However, Applicant has submitted sufficient information to mitigate the security concerns raised by her finances.

Applicant’s financial problems were not caused by irresponsible or reckless behavior, but by a “perfect storm” of professional, personal, and medical events beyond her control. Of the 12 accounts alleged in the SOR, 10 became delinquent between 2009 and 2012 as Applicant struggled to meet her financial obligations on a reduced income. Applicant acted responsibly given her circumstances in 2011 whereupon experiencing an increase in income she began working toward the resolution of her delinquent debt. She paid off the \$16,000 student loan account alleged in SOR ¶ 1.f before completing her October 2013 security clearance application. Her efforts to address her delinquent accounts have been stymied by a garnishment that claims 25% of her bi-weekly pay. The garnishment limits Applicant’s ability to pay her other remaining outstanding debts. Even with limited income, Applicant attempted to negotiate a payment plan on her third largest debt, the \$8,000 auto loan deficiency alleged in SOR ¶ 1.b – an offer that was rejected by the creditor. Her efforts to resolve her student loan account and the deficiency balance on the auto loan show a good-faith effort to repay her creditors.¹⁵

Applicant is able to live within her means and has not incurred any delinquent debt since 2012. While it cannot be denied Appellant still owes a great deal of money, this fact that does not ultimately resolve the question of an individual’s security worthiness. To date, Applicant has resolved \$47,000, or 60%, of her outstanding

¹² AG ¶ 18.

¹³ The SOR alleges that Applicant is indebted to 11 creditors for \$60,000. At the time the SOR was issued, Applicant’s credit report showed a past due balance of \$20,000 on the mortgage loan alleged in SOR ¶ 1.a. However, according to the judgment the creditor obtained in August 2011, the outstanding balance on the loan is \$39,000, raising Applicant’s total indebtedness to \$79,000.

¹⁴ AG ¶¶ 19(a) and (c).

¹⁵ AG ¶¶ 20 (b), (d), and (e).

delinquent debt. In light of Applicant's efforts, I have no doubts about her suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). The Appeal Board has held that, "an applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct;" that is, actions which evidence a serious intent to effectuate the plan.¹⁶ Applicant has demonstrated a track record of debt repayment that gives credibility to her statements that she will continue to resolve her remaining delinquent accounts as she is able.

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.m:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge

¹⁶ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).