DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-02550
	)	
Applicant for Security Clearance	)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

04/16/2015

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Decision

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on January 31, 2013. On July 28, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted 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 by DOD on September 1, 2006.

Applicant answered the SOR on August 18, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 12, 2014, and the case was assigned to an administrative judge on December 1, 2014. It was reassigned to me on January 12, 2015, to consolidate the docket. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on February 5, 2015, scheduling the hearing for February 24, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until March 13, 2015, to enable Applicant to submit additional documentary evidence, and she timely submitted AX B through M, which were admitted without objection. Department Counsel's comments regarding AX B through M are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on March 9, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted filing the Chapter 13 bankruptcy petition alleged in SOR ¶ 1.a but denied that it was "pending." She admitted the delinquent debts alleged in SOR ¶¶ 1.b-1.m and 1.p. She denied SOR ¶ 1.n on the ground that the amount alleged was incorrect and that it was a duplicate of SOR ¶ 1.k. She denied the debts alleged in SOR ¶¶ 1.n, 1.o, and 1.q. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old mechanical engineer employed by a defense contractor at a naval shipyard. She has worked for her current employer since June 1997. She received a security clearance in July 1997. She also has held part-time second jobs in retail sales since 2008 and is an adjunct professor at a local university.

Applicant attended college classes from 1996 to 2001, obtaining degrees in mechanical technology, engineering, and business. Upon receiving her engineering degree, she was promoted, became a mechanical engineer, and began making payments on her student loans by automatic payroll deductions of $319 per two-week pay period. (Tr. 48; AX K; Enclosure to Answer to SOR.)

In 2013, Applicant enrolled in a program to obtain an engineering management degree. She is a part-time student, and she is reimbursed by her employer for her tuition and course materials. (Tr. 53; AX J.) Her student loans are now deferred. (Tr. 76-77; AX K.) She expects to complete her current degree program in December 2015. (Tr. 61.). The deferment of her student loans will end six months after she completes her current program. (Tr. 49-51.)

Applicant's nephew (her sister's son) became seriously ill in March 2010 and passed away in the fall of 2011. Applicant's sister stopped working in order to care for her son. Applicant spent at least $300 or $400 per month traveling with her sister and her nephew to receive treatment. At the same time, Applicant's position as an adjunct professor was eliminated because of budget cuts. As a result, she fell behind on her mortgage loan payments. (Tr. 41-42.) She consulted with a lawyer, who advised her to "get rid of" the house. She did not follow the lawyer's advice, because she knew that if she allowed the lender to foreclose on the property or gave the lender a deed in lieu of foreclosure, her mother, sister, and son would be without a home, and she feared that she would never qualify for a home loan again. (Tr. 44-45.)

When Applicant filed her bankruptcy petition, her monthly mortgage loan payments were about $2,176, including escrow payments for taxes and insurance. (GX 2 at 24.) In May 2013, Applicant obtained a home loan modification that reduced her monthly payments to $1,596, including taxes and insurance. (Enclosure to Answer to SOR.)

Applicant has never married. She has a 17-year-old son. She testified that she and her son had some "issues," which became worse after her nephew passed away in the fall of 2011. Her son stole from her, vandalized property, and accused her of child abuse. In June 2011, she was charged with felony child abuse, and she pleaded guilty to misdemeanor child abuse. In December 2011, the charges were dismissed, and her record was expunged in December 2012. (GX 1 at 22.). She incurred substantial legal expenses responding to the child abuse charges and having the record expunged. The record contains no evidence of the factual basis for the child abuse charges. The sparse evidence regarding these charges indicates that she probably was placed in a diversion program and successfully completed it.[1]

Applicant attended parenting classes, and she and her son went to counseling. Eventually, the juvenile authorities placed her son in a foster home in 2012. (Tr. 27-28, 41.) Her son initially lived with his father's brother. In June 2013, he began living with Applicant's sister. Applicant paid child support directly to these family members, without a court order. In October 2013, Applicant's sister applied for a court order, which included an arrearage for the June-October period. Recently, Applicant's sister relinquished the guardianship, and her son now lives with his father's sister.

Applicant's credit reports reflect two child-support obligations because the venue for the court orders changed as her son's guardianships changed. Applicant's child-support obligation is $583 per month, plus $50 per month to pay the arrearage. Payments for her current obligation and the arrearage are automatically deducted from her pay. Her child-support obligation will terminate when her son reaches age 19. (AX G through J; Tr. 32-36.)

Applicant filed a Chapter 13 petition for bankruptcy in October 2010. Her petition listed $197,683 in assets and $522,698 in liabilities. Her largest debts were her home mortgage loan of $262,847, student loans totaling about $136,476, and two car loans with balances of $11,169 and $40,345 (GX 2 at 11, 15). The bankruptcy debtor's plan provided for payments to be deducted from Applicant's pay. The total funding under the plan was $31,376. The plan was confirmed in May 2011. (GX 2, Order Confirming

[1] The child abuse charges were not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the child abuse charges for these limited purposes.

Plan). Applicant expects to complete her payment plan in October 2015. (Tr. 29, 45-46; AX B.)

Applicant's primary motivation for filing the bankruptcy petition was to avoid foreclosure of the mortgage on her home, which she purchased in 2002. (Tr. 43-45.) Initially, Applicant, her son, and her mother lived in the home. Applicant's sister lived in the home in the fall of 2011, after the death of her sister's son. Applicant's mother moved out in 2012 and now lives in a senior living facility. (Tr. 38-40.)

When Applicant filed her bankruptcy petition, she declared that her gross income was $66,030 for 2008; $63,725 for 2009; and $52,365 as of November 1, 2010. (GX 2 at 27.) She testified that her current gross annual pay for her primary full-time job is about $83,000. (Tr. 60.) In addition, she is an adjunct professor at a community college and works part time in a department store. (Tr. 30.) She believes that her federal income tax refund may be sufficient to satisfy the child-support arrearage. (Tr. 61.) She testified that when the deferment of her student loans ends next year, her only obligations will be her student loans and home mortgage payment. (Tr. 52, 62.)

The medical debts listed in SOR ¶ 1.b-1.j and 1.m, totaling about $4,369, were for services rendered to Applicant and her son. (Tr. 63.) They were incurred after she filed her bankruptcy petition. Most of the debts are copays. The SOR and the credit reports on which the SOR was based do not identify the providers for the medical debts alleged in SOR ¶¶ 1.b-1.j and 1.m. Applicant testified that she believes that some debts, such as SOR ¶¶ 1.h, 1.m and 1.p, are duplicates. (Tr. 73.)

After visits to a hematologist and oncologist, Applicant underwent weight-loss surgery. (Tr. 63-64.) She has severe anemia and vitamin deficiencies and requires regular doctor's visits, diagnostic tests, and transfusions. (Tr. 70-72.)

Applicant has paid the $75 medical debt alleged in SOR ¶ 1.b. (AX A.) She testified that the medical debts in the SOR ¶¶ 1.c-1.j and 1.m are owed to three healthcare providers. She has contacted the providers and made informal commitments to pay $100 per month to each of the three providers. She continues to receive treatment from these providers, motivating her to act in good faith regarding her indebtedness to them. She admitted that she has not consistently made the monthly payments because her utility bills during the winter had been unusually high. (Tr. 66, 73-74; AX L; AX M.)

Three of four medical debts referred for collection (SOR ¶¶ 1.g, 1.h, 1.i, and 1.p) and being handled by the same collection agency. Applicant has been making periodic payments to this agency, but the amounts and the account numbers reflected on the collection agency's invoice do not match the medical debts alleged in the SOR. (AX L.) The apparent disparity between Applicant's testimony and the documentary evidence indicates that Applicant has been making payments on several medical debts, but not the debts alleged in the SOR.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. *See* ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, the documentary evidence, and her testimony at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline are potentially applicable:

> 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;
>
> 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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

AG ¶ 20(a) is partially established. Applicant's debts are recent, numerous, and not yet resolved. However, they occurred under circumstances making them unlikely to recur. Her son is approaching the age when her child-support obligation and her obligation to pay his medical bills will end. Her need for weight-loss surgery is not likely to recur. She is no longer bearing the burden of paying the household expenses for her mother, sister, and son.

AG ¶¶ 20(b) and 20(d) are established. The evidence is sparse on the question whether the circumstances resulting in Applicant being charged with child abuse and incurring legal expenses defending herself were beyond her control or were the result of misconduct on her part. However, Applicant's health problems, her son's medical needs, her loss of employment as an adjunct professor, and her travel expenses incurred while assisting her sister and nephew in treating her nephew's terminal illness were conditions beyond her control. She has acted responsibly by filing a Chapter 13 bankruptcy petition, complying with the terms of the bankruptcy payment plan, complying with the child-support order for her son, paying her student loans during the period when they were not deferred, and making payments on the medical debts incurred after her bankruptcy petition. The evidence reflects that the child-support payments have been collected by garnishment, but she chose garnishment as a means to ensure timely payments. Payment by involuntary garnishment, "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009). Payment of a debt through garnishment rather than a voluntary effort diminishes its mitigating force. ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). However, payment by garnishment does not preclude mitigation of financial concerns. *See* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006).

Applicant did not provide documentary evidence reflecting payment of the medical debts alleged in SOR ¶¶ 1.c-1.j, 1.m, 1.p, and 1.q. However, she produced evidence that she paid the debt alleged in SOR ¶ 1.b and that she was paying other medical debts not alleged in the SOR. An applicant is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all

delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. *See* ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

AG ¶ 20(c) is established. Applicant completed the counseling required by the bankruptcy court, and there are "clear indications" that her financial problems are being resolved.

AG ¶ 20(e) is not established. Although Applicant asserted that some of the medical debts were duplicates, she submitted no evidence to support her assertion and no evidence that she had disputed the duplicate debts with the credit reporting agencies, the original creditors, or the collection agencies.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

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 mature, well-educated single mother. At various times, she has assisted her mother, sister, and nephew in times of crisis, to her own financial detriment. She has worked for her current employer and held a security clearance for almost 18 years. She has worked multiple part-time jobs and pursued higher education while holding a demanding full-time job. She was candid, sincere, and credible at the hearing.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her financial problems. Accordingly, I

conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.q: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge