DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
-----	)	ISCR Case No. 15-00918
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: Michael Lambert, Esquire

12/24/2015

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Decision

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GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On August 11, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On August 28, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

[1] GE 1 (e-QIP, dated August 11, 2014).

Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on August 31, 2015. On September 11, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on October 19, 2015. The case was assigned to me on October 26, 2015. A Notice of Hearing was issued on October 28, 2015, and I convened the hearing as scheduled on November 19, 2015.

During the hearing, four Government exhibits (GE 1 through GE 4) and five Applicant exhibits (AE A through AE E) were admitted into evidence without objection. Applicant and four witnesses testified. The transcript (Tr.) was received on December 2, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She timely submitted a number of documents, which were marked as AE F through AE H and admitted into evidence without objection**.** The record closed on December 9, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted, with a detailed explanation, the factual allegations pertaining to financial considerations (¶ 1.a.). Applicant's answers are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 55-year-old employee of a defense contractor. She has been a systems engineer since June 1999.[2] She is a May 1978 high school graduate with a December 1982 bachelor's degree in an unspecified discipline.[3] She has held a secret security clearance since November 1980.[4] She has never served with the U.S. military.[5] Applicant was married in August 1980.[6] She has one son, born in 1993.[7]

[2] GE 1, *supra* note 1, at 10-11.

[3] GE 1, *supra* note 1, at 10.

[4] GE 1, *supra* note 1, at 26-27.

[5] GE 1, *supra* note 1, at 12.

[6] GE 1, *supra* note 1, at 14-15.

[7] GE 1, *supra* note 1, at 17.

Financial Considerations

Applicant and her husband purchased a small business franchise in 2000, and he has continued to operate the business while Applicant was not involved in the business and retained her full-time position with her employer. They opened a business line of credit for $35,000, with Applicant co-signing the loan.[8] The line of credit was used over the years, and her husband made routine monthly payments without any delinquencies. The business thrived and was operating at a profit until the national economy collapsed and devastated the business in 2008. Sales fell approximately 50 percent virtually overnight. He estimated that he could have absorbed losses of up to 20 percent. He downsized his workspace, workforce, and inventories with the hope of making it through the downturn. Applicant's husband managed to keep making monthly payments to vendors and creditors for several months, but there were insufficient revenues to keep up with his obligations. At that point, Applicant's husband informed her of the problem.[9] He contacted his vendors and creditors and explained the circumstances as well as his hope to be able to continue the business. Most creditors and vendors understood the problems and extended longer periods to enable the company to stay afloat. Those companies who agreed to work with him were eventually rewarded with continued payments until the accounts were resolved.

One company, the bank that issued the line of credit, refused to extend any leniency. It demanded immediate payment in full and refused to accept any proposed repayment plans. Instead, the bank charged off the remaining balance.[10] In 2011, the same year the lending bank was absorbed into another nationwide bank, Applicant and her husband were notified that the new bank had filed suit against them. They were never notified of the court date, and were not present when the case was heard. A default judgment was apparently entered against them in 2011 awarding the new bank $50,016, including principal, interest, and costs.[11] It is the basis for the allegations in SOR ¶ 1.a. Applicant and her husband were not notified of the judgment until approximately one year later. No efforts were made by either bank to collect the judgment.

Applicant's husband's company eventually started to improve financially, and by 2012, was once again profitable. Applicant and her husband set up a plan of action, and they started saving money to place in a separate money-market fund with the intent of paying off their debt.[12] In 2014, her husband again made numerous attempts to contact the new bank in an effort to resolve the debt. Noone at the new bank had any knowledge of the loan. Applicant's husband hired an attorney to assist them in resolving

[8] GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 12, 2014), at 10, 13; GE 4 (Equifax Credit Report, dated August 11, 2015), at 5; GE 2 (Personal Subject Interview, dated October 22, 2014), at 3; Applicant's Answer to the SOR, dated September 11, 2015, at 1-2.

[9] Tr. at 37-41.

[10] GE 3, *supra* note 8, at 10; GE 4, *supra* note 8, at 5.

[11] GE 2, supra note 8, at 3; GE 3, *supra* note 8, at 10, 13; GE 4, *supra* note 8, at 5.

[12] Tr. at 42, 53.

the debt, but he too had no success.[13] Attorneys who represented both the original lending bank and the new bank could not, or would not, help resolve the issue.[14] Applicant's attorney advised them that even if they paid the money to the clerk of the court, under state law, the judgment would not be satisfied unless and until someone representing the two banks is given authority to resolve the debt.[15] The money-market fund that was set up currently has $47,337 in it simply awaiting distribution to the bank(s).[16]

The business in question continues to grow and is again profitable. In 2014, it had estimated annual gross sales of $369,000.[17] This year, he expects a profit of between $60,000 and $70,000.[18] Opportunities to expand have not been undertaken because Applicant's husband refuses to have Applicant co-sign another line of credit.[19] Applicant submitted a Personal Financial Statement which indicates a monthly net income of $11,350, total monthly expenses of $5,600, and payments on current financial obligations of $2,196. She has a monthly remainder of $3,554 available for discretionary saving or spending. Applicant and her husband also have retirement accounts worth $510,400.[20] Other than the one judgment pertaining to the line of credit, Applicant and her husband have no delinquent debts.[21] On November 10, 2015, Applicant's two credit scores were reported as 809 and 812, both numbers considered as excellent.[22] The judgment is no longer listed in Applicant's November 2015 credit reports.[23]

Work Performance and Character References

The department manager, who is also one of Applicant's supervisors, has known Applicant since 1999. Applicant kept her apprised of the security clearance issue because it might affect her eligibility. Over the past 15 years, Applicant has received performance appraisals that were either "exceeds" or "far exceeds" for each period. She

[13] Tr. at 43-44.

[14] AE A (E-mail Stream, various dates); AE B (E-mail Stream, various dates); Applicant's Answer to the SOR, *supra* note 8, at 2.

[15] Tr. at 45.

[16] AE G (Account Statement, dated September 30, 2015); AE H (Account Statement, dated September 30, 2015)' Tr. at 46.

[17] Tr. at 56.

[18] Tr. at 57.

[19] Tr. at 46-47.

[20] AE F (Personal Financial Statement, dated December 1, 2015).

[21] Tr. at 49.

[22] AE C (Equifax Credit Report, dated November 10, 2015); AE D (TransUnion Credit Report, dated November 10, 2015).

[23] *See* AE C, *supra* note 22; AE D, *supra* note 22.

is considered a valuable member of the team, and has a reputation for honesty, integrity, and trustworthiness.[24] The section manager/test director – a retired military officer – has worked with Applicant for over 16 years, since he was her hiring manager. He, too, was informed of her financial situation. Applicant holds a position of trust, and she reflects the employer's highest values and ethics.[25] The technical lead, who has also served for the last six years as Applicant's immediate supervisor, characterized Applicant as an exceptional employee who is very honest and very open. Applicant informed him of the financial situation as well.[26]

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."[27] 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[28]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[29] The Government initially has the burden of producing evidence to establish

[24] Tr. 23-27.

[25] Tr. at 33-36.

[26] Tr. at 29-31.

[27] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

[28] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[29] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4,

a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[30]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[31]

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."[32] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

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2006) (citing Directive ¶ E3.1.32.1). "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).

[30] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[31] *Egan*, 484 U.S. at 531.

[32] *See* Exec. Or. 10865 § 7.

> 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(a), an "inability or unwillingness to satisfy debts*"* is potentially disqualifying. Similarly, under AG ¶ 19(c), *a "*history of not meeting financial obligations*"* may raise security concerns. Applicant's financial problems arose in 2008 when her husband was unable to continue making monthly business payments to vendors and creditors, and a line of credit for which she had co-signed became delinquent. The remaining balance was charged off. The creditor subsequently filed a law suit against Applicant and her husband, and a default judgment was entered against them in 2011. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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*"* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[33]

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. Applicant's financial problems were not caused by frivolous or irresponsible spending. The nature, frequency, and recency of Applicant's financial difficulties were infrequent, if not actually isolated, and it occurred under such unusual circumstances when the entire national economy was devastated, that it is unlikely to recur. Applicant's husband operated a thriving business,

[33] The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

> In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

operating at a profit, when his sales plummeted approximately 50 percent virtually overnight. Applicant's only relationship to the business was as an uninvolved co-owner who had previously co-signed the line of credit application. Applicant's husband finally confided to her the pending problems when he reached the point where he could no longer maintain his routine monthly payments.

Applicant's husband contacted his vendors and creditors and explained the circumstances as well as his hope to be able to continue the business. Most debtors and vendors agreed to work with him and those accounts were eventually resolved. The creditor that issued the line of credit refused, and it demanded immediate payment in full and refused to accept any proposed repayment plans. The creditor charged off the remaining balance, and it subsequently obtained a default judgment in 2011. No efforts were made by the creditor to collect the judgment. Nevertheless, Applicant and her husband set up a plan of action, and they started saving money to place in a fund with the intent of paying off their debt.

Numerous attempts were made by Applicant's husband and their attorney to contact the creditor in an effort to resolve the debt. Noone at the creditor had any knowledge of the loan. Attorneys for the creditor could not, or would not, help resolve the issue. Applicant's attorney advised them that even if they paid the money to the clerk of the court, under state law, the judgment would not be satisfied unless and until someone representing the two banks is given authority to resolve the debt. The money-market fund that was set up currently has $47,337 in it simply awaiting distribution to the creditor.

The business continues to grow and is again profitable. In 2014, it had estimated annual gross sales of $369,000, and this year, Applicant's husband expects a profit of between $60,000 and $70,000. Applicant's Personal Financial Statement indicates a monthly remainder of $3,554 available for discretionary saving or spending. Applicant and her husband also have retirement accounts worth $510,400. Other than the one judgment pertaining to the line of credit, Applicant and her husband have no delinquent debts. Applicant's credit scores were reported as 809 and 812. The judgment is no longer listed in Applicant's November 2015 credit reports.

Applicant's financial problems would be resolved by now if the attorneys representing the creditor, or the other employees or representatives of the creditor, would simply locate their file and accept Applicant's tendered payment. Their refusal, under these circumstances, was substantially beyond his control. Applicant and her husband have a fund simply awaiting notice from the creditor that a transfer can be accepted. At that point the matter will be resolved. Penalizing Applicant for the creditor's failure or refusal to act – to accept a payment – would be fundamentally unfair. There are clear indications that Applicant's financial problems are under control, and in fact, no longer exist. Applicant's actions, under the circumstances confronting her, do not cast doubt on her current reliability, trustworthiness, or good judgment.[34]

[34] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.[35]

There is some evidence against mitigating Applicant's conduct. By co-signing a line of credit, Applicant became legally obligated should there be a default on the line of credit by the other co-signer, her husband. When they were unable to continue making the normal monthly payments, the account was placed for placed for collection, charged off, and eventually it went to judgment.

The mitigating evidence under the whole-person concept is more substantial. Applicant has an outstanding reputation in the workplace. She was merely a supportive spouse who co-signed for a line of credit for their business. She had her own full-time job while her husband operated the business. Applicant's husband operated a thriving business, operating at a profit, when his sales plummeted approximately 50 percent virtually overnight, in large measure because of the havoc caused by the faltering national economy. Business eventually improved, and it is now profitable once again. The fund has $47,337 in it simply awaiting distribution to the creditor, but the creditor has failed or refused to take any positive action to accept the money to resolve the account. Applicant has a significant amount of money available each month for discretionary saving or spending. She has no other delinquent debts. Her credit rating is over 800. Her financial problems no longer exist. Her actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment.

[35] *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *See also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. [36]

Applicant has demonstrated an extraordinary track record of debt reduction and elimination efforts. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	For Applicant

[36] ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge