



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



In the matter of:)
)
) ISCR Case No. 10-11083
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Paula Phinney, Esq.

09/19/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 11, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 11, 2012, and requested a hearing before an administrative judge. The case was assigned to me on July 10, 2012. DOHA issued a notice of hearing on July 11, 2012, scheduling the hearing for August 8, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were

admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through V, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE W, X, and Y and admitted without objection. Correspondence about the additional exhibits is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on August 17, 2012.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. She seeks to retain her security clearance, which she has held since 2008. She has a Master's degree. She is married with a one-year-old child.¹

Applicant attended college from 1998 to 2002 and graduate school from 2002 to 2004. Her mother and stepfather initially helped pay for her education, and then they had financial difficulties, resulting in Applicant shouldering her education costs through student loans. She was strained financially and several debts became delinquent. She had an entry-level job after graduate school and was unable to pay her delinquent debts.² The SOR alleges six delinquent debts. Individual debts are discussed below.

In May 2012, Applicant paid or settled the delinquent debts alleged in SOR ¶¶ 1.a (\$105), 1.b, (\$175), and 1.c (\$3,674).³

SOR ¶ 1.d alleges a delinquent student loan of \$20,174. Applicant's stepfather agreed to pay the loan, which was taken out by Applicant and her stepfather in 1999. Her stepfather and her mother were laid off from their jobs in 2005 and 2008 and were unable to make the student loan payments. Applicant made several attempts to settle the loan.⁴ In October 2009, she wrote:

The above mentioned accounts were sent to collections and charged off by your company during a period when I was unemployed and unable to pay on the account. Since then, I have obtained meaningful employment and would like to negotiate a settlement on the account.

I recently obtained a copy of my credit report and noted that your company has reported this account as: **Charged-Off**. Rather than let the Statu[t]e of Limitation[s] expire on this unsecured debt, I wish to bring this account or matter to a resolution that will be fair and beneficial for both of us. My credit report is showing \$2613 as charged-off on both accounts and \$20,174 as the amount reported as owed, although the original loan

¹ Tr. at 19-25, 65-69, 89; GE 1.

² Tr. at 21-27; GE 1, 5.

³ Tr. at 49-53; Applicant's response to SOR; GE ; AE A, E, R, T.

⁴ Tr. at 36-49; Applicant's response to SOR; GE 1-5; AE B, C.

amount was only \$9980. As you are aware, [bank] was not the original lender of the loan when the loan originated in 1999, nor was involved in the shady loan practices, outrageous monthly interest, and fees which made the once manageable loan unmanageable to pay, especially during times of unemployment.⁵ (emphasis in original)

Applicant offered a settlement of \$3,613, payable in eight monthly payments of \$451.⁶ She also wrote:

Due to the inequities of the system and predatory lending practices, I AM NOT agreeable to accepting a 'PAID P & L' or 'CHARGE OFF' for an additional amount of time on my credit report. It is my position that I have suffered enough as a result of this problem on my credit.⁷ (emphasis in original)

The bank did not respond to Applicant's offer. She sent another settlement letter to the bank in February 2010. The letter had similar language, except the settlement offer was \$3,000, payable in ten monthly payments of \$300. The bank did not respond to her offer.⁸

Applicant sent another letter to the bank on May 3, 2012, asking the bank to validate the account, and threatening legal action against the bank if the defaulted loan was improperly listed on her credit report. On June 15, 2012, the bank accepted Applicant's offer to settle the defaulted loan for four monthly payments of \$1,008, with the first payment due by July 31, 2012. Applicant established that she made the first two required payments.⁹

Applicant denied owing the \$6,082 charged-off credit card debt alleged in SOR ¶ 1.e. In her response to the SOR, she wrote that the "account was paid in full and has since been removed from [her] credit report." She testified that the debt was paid in 2006. Experian reported the debt on the January 2008 combined credit report as opened in 2002, with a date of last action of 2005, and a \$4,369 balance. The debt is reported by Equifax on the June 2010 combined credit report with a \$6,082 balance. Applicant listed this debt on her Questionnaire for National Security Positions (SF 86), submitted in May 2010. She listed the status of the debt as "Closed Payment Status: Charge-Off as of 2003. Credit limit: \$2000 Balance: 6019."¹⁰ She provided the following additional comments:

⁵ GE 5; AE B.

⁶ GE 5; AE B.

⁷ GE 5; AE B.

⁸ GE 5; AE C.

⁹ Tr. at 40-49; AE F, S, W.

¹⁰ Tr. at 28-30; Applicant's response to SOR; GE 1-3.

This account was for a credit card I had while in college. This debt is still reported monthly to all the bureaus as derogatory. This credit card was charged off in 2003 while I was attending graduate school and barely making \$20K a year. I've attempted on several occasions to settle this debt but [credit card company] has not responded to any of my request[s], written or by phone. I recently mailed them settlement letters via certified mail July 2009, October 2009, January 2010 and March 2010 in attempt to negotiate with the creditor to have the item removed from the consumer's credit reports in exchange for partial or full payment. However, I have yet to receive a response.¹¹

Applicant was interviewed for her background investigation in August 2010. A signed statement was not taken, but the interview was summarized in a report of investigation (ROI).¹² The investigator summarized the discussion of the SOR ¶ 1.e debt as follows:

[Credit card company] \$6082 – This bill was for a credit card. The maximum amount on this card was \$2000. However with interest the amount increased to the final \$6082. Subject has tried to negotiate a settlement of this bill, however [credit card company] has no record as it was charged off. The bill is over seven years old. Subject fell behind on her payments in graduate school.¹³

In response to DOHA interrogatories, Applicant verified the accuracy of the ROI.¹⁴ In response to a specific question about the status of this debt, she wrote:

This is another debt I've tried on many occasions to resolve. This is from a credit card in college that was charged off in 2004. I was making payments until I lost my job. The limit was \$2000. However fees and interest is still being applied. I've called [credit card company] and also wrote letters (please see Doc D). I will need to get legal help to resolve this.¹⁵

Document D referenced in the above paragraph is a February 2010 letter Applicant wrote to the credit card company. Applicant wrote that the statute of limitations had expired on the debt, and she offered to settle the \$5,593 balance reflected on her credit report for \$300. There is nothing in the letter to indicate that the debt had been paid.¹⁶

¹¹ GE 1.

¹² GE 5.

¹³ GE 5.

¹⁴ GE 5.

¹⁵ GE 5.

¹⁶ GE 5.

Despite the above evidence and admissions, Applicant continued to assert that she paid the debt. She testified that she meant to convey in the SF 86 that she had paid the debt, but it was still being reported on her credit report. She stated that when she wrote that she was trying to “settle” the debt, she meant that she was attempting to have the paid debt removed from her credit report. She testified that she told the investigator that she paid the debt. She stated that she called the creditor and sent letters to the creditor and the credit reporting agencies disputing the debt. The debt is not listed on the January 2012 Equifax credit report or the combined credit reports from May 2012 and August 2012. She was given 30 days after the hearing to provide documentary proof that she paid the debt. She did not provide proof that the debt was paid. She submitted a copy of a letter she wrote to the credit card company on August 14, 2012, requesting an accounting from the company showing the status of the debt.¹⁷ I do not find Applicant’s evidence and testimony persuasive. I find the debt has not been paid or settled.

SOR ¶ 1.f alleges a delinquent debt of \$2,792 owed to a bank. Applicant denied owing the debt. In her response to DOHA interrogatories, she stated that the debt was paid in April 2002. In her response to the SOR, she stated it was paid in 2003 or 2004. She testified that it was paid in 2006 or 2007. The debt is reported by TransUnion on the January 2008 and the June 2010 combined credit reports with an activity date of March 2005. Applicant had multiple accounts and student loans through this bank. The debt is not listed on the January 2012 Equifax credit report or the combined credit reports from May 2012 and August 2012.¹⁸ The exact status of this debt is unclear, but I accept that Applicant paid the debt or reasonably believes that she paid it.

Applicant has never received financial counseling, but she stated that her finances are currently in good shape. Her husband is on active duty in the U.S. military, and her current job pays a good salary. They have a budget. Their family income is sufficient to pay their bills, including her student loans, with enough remaining for savings and emergencies.¹⁹

Applicant submitted a number of letters attesting to her character and her excellent job performance. She is praised for her responsibility, integrity, trustworthiness, leadership, confidence, resilience, loyalty, dedication, work ethic, professionalism, reliability, competence, and honesty. She is recommended for a security clearance. She also volunteers in her community.²⁰

¹⁷ Tr. at 29-32, 73-75, 78-85; GE 4; AE H, R, Y.

¹⁸ Tr. at 28-29, 32-34, 75; Applicant’s response to SOR; GE 2-5; AE H, R, Z.

¹⁹ Tr. at 54-63, 66, 69-70, 85-86, 89-90; AE V.

²⁰ AE J-P.

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

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 conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

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 difficulties to a lack of income while she was attending college and graduate school. Costs associated with obtaining an education do not qualify as conditions that were beyond her control. AG ¶ 20(b) is not applicable.

Applicant paid or settled four of the debts alleged in the SOR. AG ¶ 20(d) is applicable to those four debts. She provided sufficient information to make me question whether she continues to owe the debt alleged in SOR ¶ 1.f. AG ¶ 20(e) is applicable to that debt. She appears to have turned the corner financially. She has a huge student loan burden, but that is being addressed in her budget.

What remains a concern is Applicant's complete refusal to accept any responsibility for the debt alleged in SOR ¶ 1.e, when all the evidence, including her own admissions, indicates that the debt has not been paid. There is a paper trail when debts are paid. Applicant was given 30 days to find that paper trail if it existed. She did not. Her recalcitrance regarding this debt is baffling. In the face of that evidence, I am unable to determine that her finances are such that she should warrant a security clearance.

I find that Applicant's financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG §§ 20(a) and 20(c) are not applicable. I find that financial concerns remain despite the presence of some mitigation.

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 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.

I considered Applicant's favorable character evidence. However, her steadfast refusal to accept responsibility for a debt in the face of overwhelming evidence causes me to doubt her judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraphs 1.a-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge