



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



In the matter of:)
)
) ISCR Case No. 11-05883
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: Alan V. Edmunds, Esq.

09/12/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. Accordingly, her request for a security clearance is granted.

Statement of the Case

On April 4, 2012, Defense Office of Hearings and Appeals (DOHA) notified Applicant that it was unable to find that it is clearly consistent with the national interest to grant or continue her access to classified information, and it recommended that her case be submitted to an administrative judge for a determination whether to deny or revoke her security clearance. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).¹

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DoD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

In her May 8, 2012 Answer to the SOR, Applicant admitted all of the allegations in the SOR, and all but one of the new allegations listed in the SOR Amendment (see below). She also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 14, 2012, and I received the case on June 26, 2012. DOHA issued a Notice of Hearing on July 10, 2012. I convened the hearing as scheduled on July 25, 2012. The Government offered four exhibits, which I admitted as Government Exhibit (GE) 1 through 4. Applicant testified, offered the testimony of two witnesses, and submitted 25 exhibits, which I admitted as Applicant's Exhibit (AE) A through Y. I held the record open to allow Applicant to submit additional information. She timely submitted three documents. I admitted the post-hearing documents as AE Z through BB.² Department Counsel did not object to the documents, but offered comments concerning AE Z. Her comments are included in the record as Hearing Exhibit (HE) I. DOHA received the transcript on July 30, 2012.

Procedural Matters

By memorandum dated May 29, 2012, Department Counsel amended the SOR to add the four allegations at subparagraphs 1.j through 1.m, which cite additional delinquent debts. Applicant admitted allegations 1.j, 1.k, and 1.m, and denied allegation 1.l.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 40 years old, and the divorced parent of a 17-year-old son. She has completed almost half of the credits required for a bachelor's degree, and has maintained a 3.39 grade point average. She has worked for the same defense contractor for 15 years, and currently works on financial system conversion for a military department. She has held a security clearance for more than 10 years. (GE 1; AE T; Tr. 33-40, 42-43, 56, 61)

Applicant's ex-husband is a self-employed trucker. Applicant and her ex-husband filed a joint Chapter 7 bankruptcy petition in March 2001 (allegation 1.a). Most of the bankruptcy debts were related to his business. The debts were successfully discharged in June 2001. Applicant and her ex-husband divorced in 2001. Applicant's husband was abusive, broke into her house, and stalked her for years. In March 2002, her ex-

² Applicant submitted a post-hearing exhibit list, identified as HE II. In it, she marked the three post-hearing documents as AE O, P, and Q. However, she had already submitted documents identified as O through Q at the hearing, along with exhibits that continue to AE Y. Therefore, I am identifying the post-hearing submissions as AE Z through BB. (HE II)

husband was court-ordered to pay \$642 per month in child support for their son, who was seven years old at the time. Applicant's ex-husband failed to meet his child support obligation for several years, and later, paid only intermittently. She tried to have the court order enforced through the department of human resources, but without success. She remembers only one payment for the full monthly amount of support, at about the time he was incarcerated. (GE 1, 2, 4; AE A, G, H, I; Tr. 44, 50-51, 58-62)

When significant arrears accrued, Applicant's ex-husband's child support obligation was increased to \$800 per month. He did not pay the increased support, and currently, he owes \$30,422 in arrears. At one point, he told her he would make payments if he could get caught up on the arrears. She agreed to forgive approximately \$20,000 of the arrears, in hopes that he would start regular payments; he did not. She testified that he sometimes makes a payment when his commercial license is threatened, as in February and March 2012, when he paid \$500 and \$400, respectively. (GE 1; AE A, H, I; Tr. 44, 50-51, 58-66)

Applicant started attending counseling in 2004. Her therapist noted, in a July 2012 written statement, that she began therapy to help her deal with "the financial requirements of raising her child into adulthood with only minimal participation by her child's father. . . ." Applicant used credit cards to support herself and her son, and maintained a "fair" financial status for about six years. She admitted during her security interview that, around 2007, she made some poor financial decisions and spent beyond her means. She testified that her son was entering adolescence and his needs for clothing and school expenses were increasing. She has taken loans from her 401(k) account to help meet her debts. (AE O; Tr. 57, 80-83)

Applicant retained another debt-relief firm, company S, in September 2008. She was required to pay a monthly fee of \$187 for the service, and also pay into a second account from which the debts would be paid. She paid the monthly fees but, as of 2011, she had not made deposits into the second account, and the company had not paid any debts. In about January 2012, she began depositing \$340 monthly into the second account, and company S was negotiating with two creditors. Shortly thereafter, and before any debts were paid, the company went out of business and she lost more than \$4,000 that she had paid. (GE 4; Tr. 52, 66-71)

Shortly after company S failed, Applicant enrolled in a debt-settlement plan with company C. On April 10, 2012, she began monthly payments of \$350, which are automatically deducted from her checking account. The original contract with company C did not include all of the debts that appear in the SOR, so Applicant subsequently added several debts to the plan. As a result, her monthly payment will rise slightly to about \$375. The company negotiates settlements with creditors. As her payments accrue, company C pays a portion from this pool of funds to each creditor that has agreed to a settlement. The company collects a fee of 30 percent of the difference between the balance and the settlement amount. (AE E, F, W, X, Y; Tr. 47-48, 51-54, 68-70, 77)

In 2012, Applicant's salary was \$97,000. In March, she received a raise to \$118,000. As of April 2012, her net monthly take-home pay was \$5,400, or \$64,800 annually. She has saved \$103,000 toward her retirement through her company's 401(k) plan. Her April 2012 personal financial statement (PFS) lists monthly expenses of \$4,993, which includes her company C payment. After deducting the two monthly payments to the creditors she pays outside the company C plan, her net remainder is approximately \$350. (AE E, V; Tr. 43, 54, 74-77)

Applicant completed an online financial counseling course in 2012. She testified that the course confirmed the efficacy of the way she now handles her debts. She does not use credit cards, and her monthly bill payments are deducted automatically from her checking account. She has no debts that have become delinquent in the last 24 months (AE U; Tr. 52-53, Tr. 57)

The debts listed in the SOR appear in Applicant's credit reports of February 10, 2011, and May 6 and 29, 2012. The status of her debts follows. (GE 2, 3; AE B, D, F, X, Y; Tr. 46-50)

1.b (\$4,002) – PAYMENT PLAN. In November 2011, Applicant negotiated a plan with the creditor, outside of her debt-relief plan, to stop interest charges and settle the debt for \$3,126. She has been paying \$20 per month since December 2011, and has paid approximately \$175 toward the debt. She expects to add this debt to her company C plan in the future. (GE 2, 3; GE 4 at 21; AE B, AA, BB; Tr. 46-47, 72-74)

1.c (\$6,853) – PAYMENT PLAN. This debt is included in Applicant's company C plan. Her statement of June 2012 shows a negotiated settlement of \$3,427. The July 2012 statement indicates that payments to the creditor are in progress, and \$51 has been paid on the debt. (GE 2-4; AE F, B, X; GE 2, 4)

1.d (\$2,135) – The record contains conflicting information on the status of this debt. Applicant's February 2011 credit report lists it as 120 days late. Her May 6, 2012 credit report shows it was included in her Chapter 7 bankruptcy, and the May 29, 2012 report shows a zero balance. However, at the hearing, Applicant said she thinks the credit report is incorrect, and that it is a credit card that she had after her 2001 bankruptcy. Applicant's testimony conforms to Department Counsel's contention³ that the 2011 and 2012 credit reports show the last activity on the account was in 2009, eight years after her bankruptcy. However, after the hearing, Applicant submitted a statement that when she tried to include this debt in her company C plan, she was informed it had been resolved through bankruptcy, and that the creditor "does not consider this amount as still being owed." Applicant contacted the creditor herself and was informed that the account was resolved through her bankruptcy. She requested that the creditor inform the credit agencies, and was told it would take 30 days for her

³ Department Counsel referred to Applicant's post-hearing statement as AE O because it was so marked when submitted by Applicant after the hearing. However, the correct identification of Applicant's post-hearing statement is AE Z (see footnote 2).

credit reports to reflect the updated information. The creditor and the credit reporting agencies have provided conflicting information about the account. I find that the creditor's determination as to the account's status is likely to be more accurate than the credit agency, and Applicant no longer owes the debt. (GE 2 at I-57; GE 3, 4; AE D at 19, 24; AE Z, AA; HE I; Tr. 48, 88-90)

1.e (\$1,185) – PAYMENT PLAN. The debt is “in progress”⁴ under Applicant's company C plan, with a current balance of \$1,217. (GE 2, 4; AE B, E, F, X; GE 2, 4)

1.f (\$891) – PAID. Company C negotiated a settlement of \$605 and projected the debt to be paid by May 15, 2012. Applicant's May 29, 2012 credit report (GE 3) shows the account was settled and paid. (GE 2- 4; AE F, B, X)

1.g (\$3,944) – PAYMENT PLAN. The debt is “in progress” under Applicant's company C plan. The balance was \$4,195 as of July 2012. (GE 2-4; AE B, D, E, X)

1.h (\$2,748) – DUPLICATE. Applicant testified that this debt is a duplicate of the debt alleged at ¶ 1.i (see below). (GE 2 at 10, GE 3 at 2; GE 4; Tr. 50, 95-97)

1.i (\$1,399) – PAID. Company C negotiated a settlement of \$630. The June 20 and July 23, 2012 plan summaries show that this debt has been paid through the company C plan. (GE 2-4; AE C, D, F, X, Y; Tr. 49, 55)

1.j (\$5,934) – PAYMENT PLAN. This account is listed in Applicant's company C plan. It is described as “Inactive,” which is defined as “removed from service.” The record contains no further information on how company C handles Inactive debts. (GE 2- 4; AE X; Tr. 49)

1.k (\$2,035) – PAYMENT PLAN. Applicant has arranged to pay the creditor outside of her debt-relief plan. She provided documentation from the creditor showing her payments of between \$20 and \$40 per month between June 2011 and July 2012. She has paid a total of \$365. She expects to add this debt to her company C plan in the future. (GE 2, 3, 4; AE AA, BB; Tr. 50, 72-74)

1.l (\$3,750) – PAYMENT PLAN. Department Counsel agrees that the creditor for this debt is the successor creditor to the one listed at allegation 1.h., and they are duplicate entries. The debt at allegation 1.l is “in progress” under Applicant's company C plan. As of July 20, 2012, the balance was \$3,679. (GE 3; AE B, D, F, X, AA)

1.m (\$3,583) – PAYMENT PLAN. Applicant added this SOR debt to her company C plan. It is “in progress” as of July 2012. (GE 2, 4; AE X Y, AA; Tr. 50)

⁴ Company C defines “in progress” status as “insufficient funds in escrow to complete a deal at this time.” The company negotiates a settlement with the creditor once sufficient funds have accumulated to begin payments. (AE F)

Applicant's friend and former co-worker has known her for about seven years. She is aware of Applicant's financial problems. She testified that Applicant has integrity, and is completely trustworthy. Applicant's therapist provided a letter describing her as open and candid, with positive character traits and no indication of pathology. (AE O; Tr. 26-31)

Applicant's direct supervisor, a financial management program manager, testified that he supervised her for about 13 years at her current company and wrote her performance evaluations. Applicant has been a capable leader when she supervised staff. He describes her as trustworthy, notes that she has never had a security violation, or engaged in on-the-job misconduct or any conduct that would indicate she is a security risk. He recommends her for a security clearance. (AE O; Tr. 33-40).

Applicant's performance evaluations show that she is a "trusted advisor" who has a positive reputation within her company. From 2009 to 2012, her competency was rated as "exceeds standards." Applicant's career manager describes her as a "sought after subject matter expert" who "has upheld the highest ethical standards in her conduct." A co-worker of 12 years notes that Applicant understands the company's strict code of ethics and integrity and takes the requirement seriously. One of Applicant's team leaders described her "good judgment and mature outlook." A Navy captain and a retired Navy commander with whom Applicant worked submitted recommendations. The commander noted that, although her finances were strained as a single mother without child support, she is a model employee and "faithful patriot to our country." She plays a critical role in their current project, and always presented herself as "extremely ethical." The captain stated that she "relied heavily on her [Applicant's] expertise and her ability to safe guard proprietary information. . . ." She concluded that "[Applicant] has my complete faith and confidence as an employee and I will attest to her character." (AE J, K-N, P-S)

Policies

Each security clearance decision must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

⁵ Directive. 6.3.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁶ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁷ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interest as her or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

Applicant accrued significant debts that were delinquent or in collection status as of the date of the SOR. The record supports application of the following disqualifying conditions under AG ¶19:

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

The guideline also contains factors that can mitigate security concerns. I have considered all of the mitigating factors under AG ¶ 20, especially the following:

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems began in 2001. Her ex-husband accrued significant debt in his business, and they filed for joint bankruptcy. After their divorce the same year, and for many years, he failed to provide court-ordered child support. Applicant used credit cards to support herself and her son, and eventually accrued delinquencies. Not all of Applicant's financial problems came from her husband's conduct, because she admits to making poor financial decisions in about 2007. However, the lack of child support was a significant contributor to her delinquencies. The divorce and loss of her ex-husband's income were conditions beyond her control. The lack of child support was also beyond her control: she tried various ways to obtain it, both by seeking official enforcement, and by forgiving part of the arrears. When faced with these circumstances, Applicant acted reasonably. Initially, she sought psychological counseling that focused on her inability to support her family. She then acted responsibly by retaining and paying a debt-relief firm. She made payments from 2008 to 2012. Despite losing her money when that firm closed, within months she retained a second firm to continue with her efforts to meet her obligations. Applicant receives partial mitigation under AG 20 (b).

Applicant has been making efforts to resolve her financial situation since 2008. She first tried to resolve her debts by paying company S for more than three years. She is now paying \$350 per month to company C to arrange settlements with her creditors, and pay them as the funds are available in her account. Within the four months Applicant has been making payments, company C has paid two debts and has started payments on a third. She also established payment plans for two debts outside of her company C plan. She has been consistently making the payments on these two debts. Given her take-home pay of more than \$60,000 per year, and her monthly remainder of several hundred dollars, she will be able to continue to meet the payments to company C and the other two creditors, until her remaining debts have been paid. Applicant has made a good-faith effort to resolve her debts, and has brought them under control. AG ¶¶ 20(c) and (d) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge evaluates security eligibility by considering the totality of an applicant's conduct and relevant circumstances. An administrative judge considers nine adjudicative factors:

(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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Despite personal turmoil from an abusive husband, a contentious divorce, and lack of child support, Applicant maintained a stable work history with the same defense contractor for 15 years. She admits that in about 2007, she made some poor financial decisions, which, along with the lack of child support, resulted in delinquencies. She first sought psychological counseling, and then sought help from company S in 2008. After Applicant had made payments for more than three years, the firm closed without paying any of Applicant's debts. Despite losing more than \$4,000 with company S, she persisted by hiring a second firm, and included her SOR debts in the new plan. Within three months of retaining company C, it had paid two debts, and negotiated a settlement to pay the next debt that has been negotiated. The Appeal Board has held that an applicant is not required to have paid each SOR debt, but only to show that she has a plan in place to pay them, and has taken steps to implement that plan:

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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has " . . . established a plan to resolve his 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 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.

Given Applicant's credible testimony at the hearing; her solid recommendations from her coworkers, clients, and supervisor; and her history of payments to both debt-relief firms, I conclude she will continue to make her payments to company C, and will resolve her remaining debts.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
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Subparagraphs 1.a – 1.m	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge