



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



In the matter of:)	
)	
)	ISCR Case No. 11-10695
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq. Department Counsel
For Applicant: Richard L. Morris, Esq.

10/15/2013

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern generated by her delinquent debts. Clearance is denied.

Statement of the Case

On December 12, 2012, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 DOD on September 1, 2006.

On March 18, 2013, Applicant answered the SOR. Because several answers did not include admissions or denials, Applicant completed an Amended Answer on May 5,

2013, admitting subparagraphs 1.b, admitting in part and denying in part 1.a, 1.c, 1.d, and denying the remaining allegations.

The case was assigned to me on June 27, 2013. A notice of hearing was issued scheduling the case for August 15, 2013. At the hearing, I received ten Government exhibits (GE 1-10), 34 Applicant exhibits¹ (AE A - KK), and the testimony of Applicant and five character witnesses. At the close of the hearing, I left the record open at Applicant's request to allow her to submit additional exhibits. Within the time allotted, she submitted one additional exhibit that I incorporated into the record as AE LL. DOHA received the transcript (Tr.) on August 24, 2013.

Findings of Fact

Applicant is a 28-year-old married woman with three children ages eight, two, and one. Her oldest child is from an earlier marriage that ended in divorce.² Applicant's ex-mother-in-law has custody of her oldest child. Applicant has been married to her current husband since May 2011. (Tr. 66)

Applicant graduated from high school in May 2003 and joined the Army later that month. (Tr. 63; GE 1 at 18) She married her first husband in February 2004. She was honorably discharged in June 2004 after becoming pregnant. (GE 1 at 35; Tr. 64) In 2008, she joined the Army National Guard, where she serves as an air traffic controller. (Tr. 64) Since 2010, she has worked full time for a defense contractor as an access control receptionist. (GE 1 at 20) She is the assistant site administrator. (AE GG at 11)

Applicant is highly respected by her fellow Guardsmen and her coworkers. According to her commanding officer, she "exemplif[ies] the Army values of loyalty and integrity and has never strayed from these values . . ." (AE HH) According to her civilian supervisor, she is a trustworthy employee who "works very hard and does excellent work." (AE GG at 11) According to her senior level supervisor, the company's director of operations, Applicant "is the epitome of what [he] require[s] in management personnel." (AE GG at 9)

The SOR alleges that Applicant has approximately \$13,000 in delinquent debt. The debt that Applicant admits incurring totals approximately \$8,000. She contends that much of her debt was incurred by her ex-husband, a drug addict, who opened several credit cards in her name after their separation, unbeknownst to her, and used these credit cards to purchase merchandise in exchange for cocaine. (GE 2 at 9) She admits that some of her financial problems stem from youthful naivete. Also, according to Applicant's current husband, who manages the family finances, her credit reports

¹Applicant's counsel identified three exhibits as AE L, M, and O, respectively, but did not move them into evidence. They are not on file. (Tr. 13-14)

²Applicant and her first husband separated in 2004. (Tr. 65) The date of their divorce is unclear from the record.

contained multiple errors, including several incorrect addresses, phone numbers, and birth dates. (Tr. 49) He and Applicant suspect that this incorrect information may have resulted in erroneous debt being attributed to her. In January 2013, they contacted a credit reporting agency to correct the erroneous information that had appeared on her credit report. (AE C)

Subparagraphs 1.a and 1.q, totalling approximately \$900, are medical bills stemming from an appendectomy that Applicant underwent in 2007. (Tr. 71, 117) The procedure was originally billed to her father's health insurance company, and rejected unbeknownst to her. Since discovering this debt approximately two years ago, Applicant has been trying unsuccessfully to contact the creditor listed in subparagraph 1.a, calling the phone number listed on the credit reports several times. (Tr. 72) It remains outstanding. Applicant contends that she paid SOR subparagraph 1.q, totaling \$205. (Tr. 86) She has been unable to contact the creditor to get payment verification. (Tr. 72-73)

SOR subparagraph 1.b is the collection agent for a phone bill totaling \$570. Applicant opened this account in 2008. Shortly after opening this account, she was assigned to active duty in an area of the country where the carrier did not provide good cell phone reception. Consequently, she cancelled the service before the termination of her contract with the understanding that phone companies waive early cancellation fees for military personnel relocated and assigned to active duty. (Tr. 74) Approximately four months ago, Applicant contacted the collection agency. In order to obtain a waiver of the phone service cancellation penalty, she provided her active duty orders that were in effect when she cancelled the service. (Tr. 74) She intends to pay this account if the creditor rejects her request. (Tr. 74) Currently, it remains outstanding.

SOR subparagraph 1.c is a medical bill in the amount of \$208. Applicant does not recognize this bill and disputed it online. (Tr. 117) It remains outstanding.

Applicant does not recognize the accounts listed in subparagraphs 1.d and 1.e. After she disputed them, the credit reporting bureaus removed them from her credit reports. (Tr. 76-77)

SOR subparagraph 1.f totals \$182. Applicant initially disputed this account and contacted the credit bureau that had reported it delinquent. The credit bureau conducted an investigation and confirmed that it was her account. (Tr. 78) She contends that she paid the account after the credit bureau verified it. She is awaiting verification. (Tr. 77) It remains outstanding.

SOR subparagraph 1.g is a child support delinquency, totaling \$755, that was approximately 120 days overdue as of the date of the SOR. This debt was satisfied through an IRS intercept of Applicant's 2012 tax refund. (Tr. 58) It is no longer delinquent. (AE D) Applicant contends that subparagraph 1.t relates to subparagraph 1.g. Specifically, she contends that the creditor listed in subparagraph 1.t is the state child support enforcement agency that originally managed her child support payments.

When the management of Applicant's child support payments was transferred to the state listed in subparagraph 1.g, Applicant's credit report continued to reflect a balance owed to the state that initiated the child support enforcement action. (Tr. 87) Applicant provided no evidence documenting this contention.

Subparagraph 1.h is a phone bill. Applicant disputes this bill and contends that it has been deleted from her credit report. (Tr. 79) She did not provide corroborating documentary evidence.

The creditor listed in SOR subparagraph 1.i is a bank that financed a car that Applicant purchased together with her ex-husband when they were married. After they separated, her estranged husband got into a car accident. The insurance company declared that the car was a total loss. The cash received from the insurance company was less than the amount owed to the creditor. The difference totalled \$714. (Tr. 79-80) Applicant contends that once she discovered what happened to the car, she provided the creditor with the gap insurance policy that she had purchased along with the car. She contends that the creditor then removed the account from her credit report. The record evidence establishes that this debt was charged off, not resolved favorably. (AE N at 3)

SOR subparagraph 1.j, totalling \$1,051, is a car loan that Applicant cosigned for a friend "who was having issues actually purchasing a vehicle." (Tr. 81) It became her responsibility after he defaulted. (Tr. 80) She contends that she satisfied this debt. (Tr. 83) The record evidence indicates that the debt was not resolved favorably, but instead, charged off in approximately December 2009. (AE II at 6)

SOR subparagraph 1.k, an account totalling \$3,272, was accrued by Applicant's ex-husband. She contends a collection agent for this creditor obtained a judgment against her in 2010, and that she satisfied it through a monthly wage garnishment. Applicant provided evidence that she satisfied a judgment. (AE E) There is no evidence establishing that the judgment Applicant satisfied is for the same debt that is listed in subparagraph 1.k. I find that this debt remains unresolved.

Applicant disputes subparagraphs 1.l through 1.n, 1.p, 1.r and 1.s, and contends that they were resolved favorably. They are not listed on the most recent credit bureau report. (AE II; Tr. 83-87)

Subparagraph 1.o is a delinquency for an overdrawn bank account totalling \$273. Applicant paid this account in July 2011. (AE E)

SOR subparagraph 1.u is a delinquent motorcycle insurance policy. Applicant does not own a motorcycle. She contends this was erroneously attributed to her. She has disputed this bill. (Tr. 59, 88) It remains outstanding.

Applicant has never attended credit counseling. (Tr. 152) She developed a budget and submitted it after the close of the hearing. (AE LL) She and her husband have approximately \$461 of monthly after-expense income. (AE LL).

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18)

SOR subparagraph 1.e does not identify a creditor. Although SOR pleadings need not be drafted with the same level of precision as criminal court pleadings, they must at minimum be drafted so as to provide applicants with a reasonable opportunity to respond. SOR subparagraph 1.e does not meet this threshold.³ Assuming for the sake of argument that it a justiciable allegation, Applicant successfully got it removed from her credit reports. I resolve subparagraph 1.e in Applicant’s favor.

³SOR subparagraph 1.c similarly did not identify a creditor. However, unlike subparagraph 1.e, Applicant partially admitted subparagraph 1.c, identified it, and discussed her efforts at resolving it.

Applicant paid subparagraphs 1.g and 1.o. I resolve these allegations in her favor, also.

The remainder of the debts alleged in the SOR trigger the application of 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 AG ¶ 20 are potentially applicable:

(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’s debt was incurred, in part, by her ex-husband who abused her credit, using it to purchase merchandise in exchange for illegal drugs. Also, two of her debts were medical bills that were initially billed to her father’s health insurance plan, but rejected, whereupon they became her responsibility. Given that she was under 25 years old when she underwent the medical procedure, it was not unreasonable for her to have assumed that her father’s insurance may have covered the medical procedure.

Conversely, Applicant unwisely cosigned a loan for a friend who had a history of financial instability. Moreover, she allowed her child support payments to become delinquent. Consequently, although I am persuaded that she has been acting in good faith to resolve her financial problems, AG ¶ 20(b) only applies partially.

Applicant has been contacting credit reporting agencies and creditors to inquire into her delinquencies and dispute debts with which she disagreed. Many of the bills that she disputed have been deleted from her credit reports. However, she provided minimal supporting documentation substantiating the basis of her disputes, or verifying the debts she paid. Nevertheless, the efforts of Applicant and her husband at getting disputed debts removed from her credit reports are sufficient to trigger the partial application of AG ¶ 20(e). Moreover, because these efforts are being made in good-faith, I conclude that AG ¶ 20(d) also applies.

Applicant is highly respected by her fellow Guardsmen and her coworkers. Many of her financial problems stemmed from her first marriage when her then-husband abused her credit. When they were together, Applicant was in her late teens to early twenties and did not understand the significance of bad credit or how to resolve it. For the past two years, she has been working with her current husband to resolve her financial problems and get disputed debt removed from her credit reports.

Department Counsel argues that Applicant did not provide enough evidence either substantiating the debts she allegedly paid or substantiating the basis of the debts she disputed. Applicant's counsel argues that it is unreasonable to require Applicant to provide additional corroborating evidence once a credit reporting agency investigates a dispute, resolves it in Applicant's favor, and removes it from her credit report.

Applicants are reasonably expected to be able to get documentation concerning their financial interests. (ISCR Case No. 98-0419 (April 30, 1999)) Consequently, although Applicant testified credibly about the frustration of getting verification for her allegedly successful resolution of the disputed SOR debts, there are simply too many debts with statuses that are unverified or unresolved to conclude that the security concern generated by Applicant's financial problems has been mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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 considered the whole-person factors in my analysis of the disqualifying and mitigating conditions and they do not warrant a favorable conclusion at this time.

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.c:	Against Applicant

Subparagraph 1.d–1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h - 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p - 1.u:	Against 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge