



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



In the matter of:)	
)	
)	ISCR Case No. 11-11375
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/07/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has recently made some payments on the 17 charged-off or collection accounts alleged in the Statement of Reasons (SOR). However, her payments are insufficient in number and magnitude to resolve the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 23, 2013, the DoD issued an SOR detailing security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

grant or continue Applicant's security clearance. On August 19, 2013 and August 22, 2013, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated November 13, 2013. The FORM contained 12 attachments. On December 4, 2013, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

On December 26, 2013, Applicant responded to the FORM and included documentation as to certain debts. Department Counsel did not object to the material, which was admitted into the record. On January 15, 2014, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admitted all of the factual allegations in the SOR, and her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 48-year-old integration technician who has worked for a defense contractor since 2009, and seeks to obtain a security clearance. (Item 10) In August 2010, her security clearance eligibility was denied due to her criminal background and her credit. Her mother has cancer and periodically Applicant has missed work to take care of her. (Item 10)

Applicant was questioned about her finances during personal subject interviews in April 2009 (Item 11) and August 2012 (Item 10). In March 2012, she was also asked about her finances in written financial interrogatories. In March 2012, her personal financial statement indicated her monthly net remainder (monthly income less monthly expenses and monthly debt payment) was approximately \$900. (Item 5)

Applicant has experienced financial problems since at least 2007, when the debt listed in SOR 1.I went to collection. In February 2007, she wrote three checks to a grocery store, was arrested and charged with the misdemeanor of writing worthless checks. (Item 10, 11) The charge was later *nolle prossed*. (Item 10) In September 1992, she was charged with fraud for writing a check with insufficient funds in the bank. (Item 10) In 2003 or 2004, she wrongfully obtained unemployment compensation while having a job. (Item 10, 11) In 2007, she was charged with theft of property third degree for her action. (Item 10) She was required to pay \$1,693 in restitution and placed on probation for three years. She entered into a repayment plan with the state to pay \$50 monthly and made her payments until 2009, when she was unemployed for two weeks. (Item 10) In February 2011, the restitution was complete and her probation ended in March 2012. (Item 5, 10)

Applicant's criminal conduct is not considered for its security significance under the criminal conduct guideline, but as the conduct provides information as to her past financial problems.

In September 2010, Applicant purchased a 2002 Ford vehicle for her daughter at a cost of \$11,406. (Item 6, 10) After making payments for two years, she was unable to continue making the payments² and told the lender to come and get the car. (Item 6, 10) Once repossessed, the car was sold, and the creditor informed her she owed additional money (\$8,171) on the debt. (Item 10) She admitted owing the debt, but disputed the amount owed. (Item 3) There are two accounts with the collection agency. The deficiency balance owed on the repossessed car has been waived. (FORM Answer) She also owed \$535.70 on a vehicle repair contract with the same creditor. (Item 3) She provided documentation showing a \$50 payment in October and another in December 2013. (FORM Answer)

Applicant was unemployed for two weeks in 2009, before she obtained her current job. She took control of three of her friend's children. In August 2012, she referred to two of the children as her "God-children" who resided with her and for whom she provided financial support. (Item 10) During her April 2009 personal subject interview (PSI), she asserted her debts were tied to her obtaining custody of the three children who were not on her insurance and due to the children's medical bills. (Item 11) She asserts she now has insurance for the children and provided documentation showing dental insurance cards for two of the three children. (Item 3)

The SOR lists nine medical debts (SOR 1.a through 1.i: \$232, \$81, \$50, \$25, \$186, \$340, \$187, \$41, and \$200), now in collection, which totaled \$1,342. As of August 2013, she had contacted the collection firm and was attempting to establish a repayment plan. The collection firm was collecting on ten accounts totaling \$2,773. Applicant made a \$50 payment on September 19, 2013, a \$50 payment on October 18, 2013, and a \$100 payment on November 4, 2013. (Item 12) As of December 26, 2014, she had made no additional payments on these debts. (FORM Answer)

Some of the SOR debts were discussed during her March 2009 PSI. (Item 11) In her August 2012 PSI, each of the SOR debts was discussed. She stated she would be contacting the creditors and was attempting to establish repayment arrangements on the debts. (Item 10)

Applicant owed a lending company \$330 for a charged-off account (SOR 1.p). She made a \$70 payment on this debt in September, 2013, and a \$50 payment in November, 2011. (FORM Answer) The balance due on this debt is \$260. She asserted, but failed to document, that she had arranged with the creditor to make \$70 monthly payments on this debt. However, the November payment was only \$50, and she has not documented any additional payments on this debt. (Item 3, FORM Answer)

² Applicant's personal financial statement provided in April 2012 (Item 5) indicated she was making \$200 monthly payments with a balance due on the car of \$8,370.

Applicant has documented that she made 13 payments totaling \$810 between August 2013 and December 2013. (FORM Answer) The debt in SOR 1.k was reduced by an additional \$210, but no documentation as to this additional reduction was submitted. She made the following payments : in August three payments totaling \$180; three payments in September totaling \$190; three payments in October totaling \$170; one payment in November totaling \$100; and three payments in December totaling \$170.

A summary of Applicant's judgment, accounts charged off, accounts placed for collection and other unpaid obligations and their current status follows:

	Creditor	Amount	Current Status
a	Medical collection debt.	\$232	Three payments made. Between August 2013 and November 2013, Applicant paid \$200 on this debt and the following eight medical debts. (FORM Answer)
b	Medical collection debt.	\$81	
c	Medical collection debt.	\$50	
d	Medical collection debt.	\$25	
e	Medical collection debt.	\$186	
f	Medical collection debt.	\$340	
g	Medical collection debt.	\$187	
h	Medical collection debt.	\$41	Discussed during the March 2009 PSI. (Item 11)
i	Medical collection debt.	\$200	
j	Collection account for debt incurred in June 2010.	\$1,807	Unpaid. Applicant asserts she made several attempts to contact the creditor. (FORM Answer) Creditor has not returned her calls. She hopes to establish a repayment arrangement for this debt.
k	Collection account for a school debt. Debt was discussed during the March 2009 PSI. (Item 11)	\$1,405	Paying. Applicant provided documents showing \$70 payments in September, October, and December. (Item 3, 12, FORM Answer) Additionally the balance due was reduced from \$1,264 in September 2013 to \$843 by December 2013. (FORM Answer)

	Creditor	Amount	Current Status
l	Collection account for a wireless company debt incurred in September 2007.	\$40	Paid in August 2013. (Item 3, FORM Answer) The debt was discussed during the March 2009 PSI, but paid four and a half years later. (Item 11)
m	Credit card account charged off in December 2010.	\$441	Unpaid. Applicant is attempting to contact the debtor. (Item 3)
n	Loan account charged off in June 2013. Discussed during the March 2009 PSI. (Item 11)	\$454	Single payment made. In August 2013, she made a \$70 payment. (FORM Answer) Applicant asserted, but provided no documentation, that she arranged with debtor to make \$65 monthly payments on this debt. (Item 3)
o	Automobile repossession.	\$8,171	The deficiency balance owed on the 2002 Ford vehicle has been waived. (FORM Answer) Applicant owed \$535.70 on a vehicle repair contract with this creditor. (Item 3) She made a \$50 payment in October and another in December 2013. (FORM Answer)
p	Lending company charged-off account.	\$330	Applicant paid \$70 in September 2013 and \$50 in December 2013. (FORM Answer) The balance due is \$260. She asserted, but failed to document, that she had arranged with the creditor to make \$70 monthly payments on this debt or that she has made any payments since September 2013. (Item 3)
q	Account charged off in December 2008. Discussed during the March 2009 personal-subject interview. (Item 11)	\$490	Single payment made. In August 2013, Applicant made a \$70 payment. (FORM Answer) She asserted, but failed to document, that she had arranged with the creditor to make \$70 monthly payments on this debt. (Item 3)
r	Account charged off in December 2008.	\$490	Duplicate listing. The creditor reports list a single debt owed to this creditor. (Items 6,7, 8)
	Total debt listed in SOR	\$14,480	

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 must be considered 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, 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. 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 interests of 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 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 Executive Order (EO) 10865 provides that 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant has a history of financial problems. Applicant's history of delinquent debt is documented in her credit report, her interviews by an Office of Personnel Management (OPM) investigator, her SOR response, her response to interrogatories, and her FORM response. Applicant owed approximately \$14,500 on 17 charged-off, collection, and past-due accounts. Some of the delinquent accounts were incurred starting in 2007, discussed as early as her March 2009 PSI, and remain unpaid. The evidence supports application of disqualifying conditions AG ¶19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶20 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.

In 2003 or 2004, Applicant was unemployed. In 2009, she was unemployed for two weeks just prior to her obtaining her current employment. Her multiple delinquent debts and financial problems are continuing in nature. Her handling of her finances, under the circumstances, casts doubt on her current reliability, trustworthiness, or good judgment.

AG ¶ 20(a) does not apply. The financial problems started in 2007, but the 17 debts remain unpaid. She has numerous debts and, because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. Applicant has been asked about these obligations starting in April 2009. Given sufficient opportunity to address her financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on her current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) has limited application. Applicant's mother has cancer and Applicant has missed worked to take care of her mother. Additionally, Applicant obtained custody of three children. These are factors beyond her control. Now that she has custody of the children she has been able to obtain insurance for them. Nine of the SOR debts, totaling approximately \$1,300, are for medical expenses.³ Applicant has paid \$200, in three payments, on these nine debts. With only three payments, it is too soon to find it is likely that Applicant will continue to make payments on these debts. She failed to show the financial impact of her mother's cancer on her ability to pay her debts.

In March 2012, Applicant's net monthly income was \$900. She is no longer making \$200 monthly car payments, which would increase her net monthly income to \$1,100. The record does not contain a more current personal financial statement.

³ The record does not indicate if Applicant or the children received the medical treatment.

The mitigating condition listed in AG ¶ 20(c) does not apply. There is no showing Applicant has received financial counseling. Additionally, there is no clear showing that many of her financial obligations are being addressed.

The mitigating condition listed in AG ¶ 20(d) does not apply to the majority of the SOR debt. She made more than a single payment on only four of the debts. To date, Applicant's efforts to address her delinquent accounts have been minimal. There is no documentary evidence to support her assertions that she contacted two creditors (SOR 1.j and m) and tried to arrange repayment plans. She paid a \$40 debt (SOR 1.l), and made at least three payments on the school debt (SOR 1.k), I find for her as to these two debts.

The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed account.

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.

Applicant has failed to show more than a minimal number of payments on a few of her SOR debts. Her attempts at repayment followed her receiving the SOR. The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that she has paid off each and every debt listed in the SOR. All that is required is for her to demonstrate she has established a plan to resolve her delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and her actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment

on 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.

There is insufficient evidence of sufficient payments on Applicant's delinquent debts. On three of the debts (SOR 1.j, m, and o⁴) she made no payment. In August 2013, she paid the \$40 debt (SOR 1.l) that she incurred in 2007 and has been questioned about since 2009. She made a single payment each on two other SOR debts (SOR 1.n and q.). She has made two payments on the debt listed in SOR 1.p and made three or more payments on her medical debts (SOR 1.a – i) and on the school debts (SOR 1.k). It is too soon to determine that she will continue making her payments.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide sufficient documentation regarding her past efforts to address her delinquent debt. By failing to provide such information the financial considerations security concerns remain.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. There is some evidence in favor of mitigating Applicant's conduct. Her mother has cancer and she has missed work to take care of her. Additionally, she has custody of three children. After a lengthy period of inaction, during which she did not address her past delinquent accounts, even though repeatedly asked about her debts, she has initiated some effort to address her debts.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant would like to pay her delinquent debt, but her history of actual payment on her debts is very limited.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but it is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant continues with her payments on her delinquent obligations, establishes compliance with a repayment plan, or otherwise substantially addresses her past-due obligations, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not supported by the evidence she presented.

⁴ Creditor has waived the \$8,171 deficiency balance on the repossessed vehicle. (FORM Answer)

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E 3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – j:	Against Applicant
Subparagraphs 1.k and l:	For Applicant
Subparagraphs 1.m – q:	Against Applicant
Subparagraph 1.r:	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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge