



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



In the matter of:)
)
 REDACTED) ISCR Case No. 11-11647
)
 Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Lucas T. Hanback, Esq.

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns raised by her past history of financial issues. Her financial problems were caused by unemployment, lack of adequate child support, and medical expenses. Applicant took steps to reduce her household expenses while unemployed, including moving into low-income housing and obtaining state-subsidized health insurance. After regaining fulltime employment in 2011, Applicant satisfied over \$10,000 in credit card debt and a number of other debts she acquired while unemployed. She is in the process of resolving her remaining debts. Applicant's track record of debt repayment and how she currently manages her finances, coupled with her prior history of handling and safeguarding classified information, mitigates the security concerns raised by her past financial trouble. Clearance is granted.

Statement of the Case

On November 23, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant an SOR, alleging security concerns under Guideline F (Financial Considerations). Applicant timely answered the SOR and requested a hearing (Answer).

On February 4, 2013, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on February 11, 2013 and, after coordinating with the parties, scheduled the hearing for March 7, 2013.

At hearing, Government Exhibits (Gx.) 1 through 7 and Applicant's Exhibits (Ax.) 1 through 16 were admitted into evidence without objection. Applicant testified and requested additional time to submit further documents. I granted her request and she timely submitted an updated Ax. 16 (budget), and Ax. 17 through 21.¹ These exhibits were also admitted without objection. DOHA received the hearing transcript (Tr.) on March 18, 2013, and the record closed on March 22, 2013.

Findings of Fact

Applicant is 46 years old. She divorced in 1999 and has been separated from her husband since 2007. She has two children, ages 17 and 27.²

Applicant worked as a federal contractor from 2001 to 2007, and held a security clearance without issue the entire time. Due to funding cuts to the U.S. Government project she was working on, Applicant took a job with a different employer in 2007. Two years later, in April 2009, Applicant was laid off when her new employer suffered a business downturn. Her salary then was approximately \$90,000 per year and, after being laid off, she started receiving about \$2,200 per month in unemployment.³

Applicant was initially unemployed from April 2009 to January 2010. She looked for a job every day and worked odd end jobs to supplement her income, but was unable to find a job until securing a short-term contracting job in January 2010. She was again laid off when the contract ended in October 2010. She was unemployed until February 2011, when she started her current job with a starting annual salary of \$85,000.⁴

In May 2009, or a month after being laid off, Applicant's estranged husband filed a petition seeking custody of their daughter and reduction in child support. Applicant had always maintained custody of their daughter and spent a large portion of her savings paying for an attorney and the associated litigation costs. The petition for a change in custody was denied, but the monthly amount of child support Applicant was receiving was reduced from \$440 to \$100.⁵

¹ Hearing Exhibit (HE) I is a demonstrative aid prepared by Department Counsel regarding the SOR debts. HE II is the Government's exhibit list, while HE III and IV are Applicant's original and amended exhibit lists. For ease of reference, Applicant consecutively numbered her exhibits.

² Tr. at 18-20; Gx. 1 – 2.

³ Tr. at 17-18, 21-32, 130; Gx. 1; Ax. 3; Ax. 5.

⁴ Tr. at 17-18, 21-32, 41-42, 48-49, 130; Gx. 1; Ax. 8.

⁵ Tr. at 37-41, 122; Gx. 2; Ax. 4.

After being laid off in April 2009, Applicant did not have medical insurance and was twice hospitalized. She applied for and obtained health insurance through a state-sponsored program that covered the cost of her hospitalizations. She attempted to reduce her household expenses by asking her landlord to move to a more modest apartment in the same complex. The landlord refused and, unable to afford to break the lease, Applicant waited until the lease expired in December 2010 to move with her daughter to a low-income, rent-subsidized apartment. Applicant also cut back on other household expenses. She did not have a car for the ten months she was initially unemployed and went without cable for over two years. Unfortunately, these cost-saving measures were not enough and she turned to credit cards to pay her bills. Eventually, Applicant fell behind on her credit cards and other bills.⁶

After securing employment, Applicant contacted the creditors holding the vast amount of the credit card debt she had acquired while unemployed. She entered into a payment arrangement with her creditors, paying them at least \$500 a month. She submitted documentation that these debts, totaling approximately \$10,000, were satisfied before the SOR was issued.⁷ She also submitted documentary proof of satisfying the \$691 credit card debt in 1.j and the \$262 telephone bill in 1.k.⁸ She brought the \$1,767 debt in 1.h down to a current balance owed of \$173.⁹ She disputed the debts referenced in 1.a, 1.b, and 1.l with the credit reporting agencies, and her current credit report reflects these debts as paid.¹⁰

Applicant's only SOR debts that remain unresolved are the medical debts in 1.c-1.g and 1.n-p, totaling over \$10,000, and the car debts in 1.i and 1.m. Applicant testified that the medical debts are related to her hospitalizations while unemployed and should have been covered by the state-sponsored health insurance program. She has submitted a dispute with the credit reporting agencies.¹¹ As for the car debts, both represent vehicles that she cosigned with her estranged husband and had no reason to suspect he had failed to pay. One of the vehicles, she accompanied her husband when he returned it to the dealer upon the expiration of the lease and there was no indication

⁶ Tr. at 32-37, 42-48, 77-84, 90, 95-96, 120-123; Answer; Ax. 7; Ax. 19.

⁷ Tr. at 48-54; Ax. 10 (proof of payments); Answer. See also Ax. 9 at 30, 34-38 (credit report reflects that \$12,867 for credit card judgments were paid, plus over \$3,300 in other credit card debt).

⁸ Tr. at 53-54, 65-68, 71-77, 113-116; Ax. 9 at 31 (reflects that 1.j was paid as of 8/1/12); Ax. 12 and Ax. 21 (proof of payment of 1.k). See also Ax. 10 – 11 (further proof of payment of 1.j).

⁹ Tr. at 68-71; Ax. 9 at 39 (reflects \$173 balance).

¹⁰ Ax. 9 at 39 (reflects debt in 1.a paid as of 4/11), 38-39 (debt in 1.b paid as of 8/08, which is consistent with Applicant's testimony that this old dental bill was covered by her medical insurance provided through her prior employer); 41 (listed under satisfactory accounts with a \$0 balance). See also Tr. at 42-48, 77-84, 105-108 (basis for disputing 1.a), 88-89, 104-105 (basis for disputing 1.b), 62-65, 132 (basis for disputing 1.l); Ax. 13 (letters of reference from former landlords that supports Applicant's dispute of the debt alleged in 1.a); Ax. 14 (consistently disputes the debt in 1.a); Answer.

¹¹ Tr. at 32-37, 54-59, 99-104; Ax.7; Ax. 9 at 31-32, 35-36; Ax. 19-20; Answer.

of any deficiency owed. The other vehicle, she returned in about 2006, at the end of that car's lease and then promptly leased another vehicle from the same vendor. She would not have been able to lease another car if the first vehicle had an outstanding balance. She also submitted disputes with the credit reporting agencies regarding these debts.¹²

Applicant credibly testified that if it is eventually determined that she is responsible for the medical and car debts that she will pay them, just as she paid the other debts she accumulated while unemployed. Her focus over the past two years has been on resolving those debts that she is certain are hers and she will now focus on resolving those debts that she disputes owing. She is hesitant to apply for credit counseling and debt-consolidation services, because she has found that many of these firms are unreliable and exacerbate an individual's financial problems.¹³

Applicant lives modestly. She moved into a new apartment after securing her current job. Her rent is nearly \$600 less than what she paid before becoming unemployed two years ago. She purchased a used, late model car with a modest monthly payment and only did so because she needed it to get to work. She does not go out to eat and does not spend money on entertainment or on frivolous purchases. Applicant's budgeting allows her to pay her monthly expenses and still have over a \$1,000 a month in discretionary income to pay unanticipated expenses and resolve any legitimate debts that remain. She spends her free time raising her daughter and volunteering in the community, including supporting local organizations focused on helping those who were severely affected by a recent natural disaster. Her employer writes that she is a valuable member of their team, who is well respected by their government clients. Applicant has a good reputation at work for her integrity, character, and trustworthiness.¹⁴

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

¹² Tr. at 20-21, 60-62, 84-88; Ax. 9 at 32 (1.m, \$0 balance), 37-38 (1.i).

¹³ Tr. at 93-97, 126-127; Ax. 20.

¹⁴ Tr. at 59-60, 90-93, 120-127; Ax. 15 – 18.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at 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.

Applicant’s inability to pay her bills and accumulation of approximately \$30,000 in delinquent debt raises this concern. It also establishes AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

An individual's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹⁵ Accordingly, Applicant may mitigate the concern by establishing one or more of the conditions listed under AG ¶ 20:

(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 and provides documented proof to substantiate the basis of the dispute.

Applicant's financial problems were due to matters outside of her control, primarily two years of unemployment or underemployment during which she had unexpected medical emergencies and the child support she was receiving was severely reduced. She did not walk away from her financial obligations. Instead, after securing employment, she contacted her creditors and agreed to payment plans to satisfy her debts. Over the past two years, she satisfied over \$10,000 of debt that she had accumulated while unemployed. She satisfied a significant portion of this debt before the SOR was issued. The debts that remain relate to either car debts her husband is primarily responsible for paying or uninsured medical expenses, which based on the documents Applicant submitted, should have been covered by the state-sponsored health insurance program. Based on Applicant's track record of debt repayment and how she currently manages her finances, I am convinced she will resolve these remaining debts.¹⁶ Applicant established that she has her financial situation under

¹⁵ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

¹⁶ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for

control and her past debts no longer cast doubt on her current reliability, trustworthiness, or good judgment. Thus, I find that AG ¶¶ 20(a) through 20(e) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁷ Applicant is a dedicated mother who has raised two children primarily on her own. She resolved a significant portion of the debt she acquired while unemployed before the SOR was even issued. She volunteers her time to help others, and is respected by co-workers and neighbors for her integrity and reliability. She previously held a security clearance for over six years and her recent financial trouble no longer calls into question her ability to once again be entrusted with a clearance. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.p: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan").

¹⁷ The non-exhaustive list of adjudicative factors are: (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.