



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



In the matter of:)	
)	
)	ISCR Case No. 11-14689
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: James E. Watson, Personal Representative

11/26/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 27, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 5, 2013, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on July 17, 2013, and she answered it on August 5, 2013. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA) and designated a personal representative. Department Counsel was prepared to proceed on September 12, 2013, and I received the case assignment on September 26, 2013. DOHA issued a Notice of Hearing on September 30, 2013, and I convened the hearing as scheduled on October 17, 2013. The Government offered exhibits (GE) marked as GE 1 through GE 10, which were received and admitted into evidence without objection. GE 4 was admitted for purposes limited to the financial issues in this case. Applicant testified. She submitted exhibits (AE) marked as AE A and AE B, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 28, 2013. I held the record open until November 1, 2013, for Applicant to submit additional matters. Applicant did not submit any additional evidence. The record closed on November 1, 2013.

Procedural Ruling

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8. of the Directive to receive the notice 15 days before the hearing. After consulting with her personal representative, Applicant affirmatively waived this right under the Directive. (Tr. 9.)

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR. Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 58 years old, works as an assembler technician for a DOD contractor. She has worked in her job for 31 years. The records does not reflect any disciplinary problems during her years of employment. Applicant has held a security clearance since 1982 without incident.¹

Applicant married her first husband in 1974, and they divorced in 1997. She has three sons, ages 39, 34, and 29. She married her current husband, an immigrant, in 2005. He currently resides and works in construction outside the United States. She attended college part-time from January 2002 until June 2004. She received a vocational certificate in June 2004.²

¹GE 1; GE 2; Tr. 34, 37.

²GE 1; GE 2; Tr. 38-40.

Applicant and her first husband filed a Chapter 13 bankruptcy petition in October 1995, which was “discharged” on January 29, 1997. On the same day, Applicant and her first husband filed a new Chapter 13 bankruptcy petition.³ Upon the recommendation of the bankruptcy trustee, the court dismissed Applicant’s second Chapter 13 case on May 1, 1998 because Applicant and her husband could not proceed to confirmation of a payment plan. Shortly thereafter, Applicant, as the sole petitioner, filed a Chapter 7 bankruptcy petition on September 14, 1998, and her existing debts were discharged on January 6, 1999.⁴

In early November 2006, Applicant’s union initiated a strike against her employer. During the strike, she did not receive pay from her employer. She did work part-time in retail sales. She returned to work January 22, 2007. Nine months later, Applicant broke her ankle. She remained off work until February 11, 2008.⁵ During this time, she received disability income, which was 75% of her base pay; however, Applicant stopped paying many of her bills as she lacked sufficient income.⁶

Applicant files her income tax returns each year. After she filed her federal tax return for the tax year 2007, the Internal Revenue Service (IRS) determined that she owed an additional \$2,000 in income taxes. She and the IRS agreed to a payment plan, and at her request, she paid the IRS through regular deductions from her pay. She paid this debt in full in 2011.⁷

Applicant’s father died in 2010. She paid \$2,000 towards his funeral costs. Applicant received notice in November 2011 that her husband was not covered under her health coverage plan and that she needed to repay \$1,590 for non-covered medical expenses, which she did. In 2012, her mother needed surgery, and she contributed \$1,200 towards the cost.⁸

Applicant’s husband was employed sporadically from 2007 until 2010. In 2010, her husband was informed that his permanent residency status would expire. He was

³Documentation in the record does not explain the need to file a second Chapter 13 bankruptcy petition on the same day as the first Chapter 13 bankruptcy petition was discharged. GE 8. If the 1995 Chapter 13 petition had been dismissed, then a new filing is appropriate.

⁴GE 8 - GE 10; Tr. 32, 72.

⁵In her personal subject interview on October 24, 2011, Applicant stated that the strike occurred in 2008 and she broke her ankle in 2009, but could not provide specific dates for these events. (GE 2) At the hearing, she provided specific dates for these occurrences. (Tr. 40-42) Because she provided specific dates at the hearing, I find the hearing dates to be more accurate.

⁶Tr. 41-42, 89.

⁷Tr. 70-71, 91.

⁸GE 2; GE 3; Tr. 38-39, 42-44, 80.

deported from the United States in 2010 and has not returned to live in the United States.⁹ The loss of his income has impacted her financial ability to repay her debts.¹⁰

Applicant purchased a house in 2003 and a Deed of Trust through Company A was recorded on August 1, 2007. She sold the house, and she resolved her mortgage debt with company A, as shown by the documents in the record. In 2005, Applicant purchased a second home with a mortgage from Company B. Applicant financed the property with an adjustable rate mortgage. Her initial payment was \$1,000 a month. When the payments increased, she could not pay the new amount. She continued to pay the original \$1,000 monthly amount. She applied for a loan modification with Company B in 2008 or 2009, but Company B denied her request. Company B proceeded with foreclosure on the house, and she surrendered possession of the house on June 23, 2011. Company B paid her a relocation fee of \$1,500 at this time. Applicant does not owe any debt on this property.¹¹

In 2009, Applicant contacted a credit service company. She was unable to comply with the plan terms because of a wage garnishment. In 2011, Applicant contacted a debt consolidation company to help her resolve her debts as she could not pay all her debts at once. She met with a company representative in December 2011. She did not continue a working relationship with this company because she received poor information from the company. She attempted to resolve her debts on her own and said she had done so with her smaller debts. A few days before the hearing, Applicant retained the services of a debt resolution company. The company worked out a budget with her, and she signed an agreement with them on October 16, 2013. Under her plan, she will pay \$359 a month towards the resolution of her debts. She was to make her first payment on October 21, 2013. She took one financial counseling class with this company, and she plans to participate in additional classes through this company.¹²

The SOR identifies 15 unpaid debts. The SOR and credit reports dated October 4, 2011, February 4, 2013, and September 12, 2013 identify the following debts owed by Applicant:

SOR ¶	TYPE	AMOUNT	STATUS	EVIDENCE
1.a	Collection	\$ 317.00	Paid	AE A
1.b	Cell phone	\$ 882.00	Payment plan	AE B; Tr. 26, 48

⁹Applicant's spouse acquired his permanent resident status through a former marriage. His marriage to Applicant did not stop his deportation. GE 2, p.9.

¹⁰GE 2.

¹¹GE 3; GE 5 - GE 7.

¹²GE 2; GE 3; AE B; Tr. 33.

1.c	Collection	\$ 415.00	Paid on 9/24/13	Tr. 26, 49
1.d	Medical bill	\$ 75.00	Paid on 10/11/13	Tr. 27, 50
1.e	Collection	\$ 87.00	Paid on 10/11/13	Tr. 27, 50
1.f	Collection	\$ 1,013.00	Disputing as not her account; 10/14/11 credit report shows original creditor is debt in SOR ¶ 1.m	Tr. 27, 50
1.g	Collection	\$ 1,979.00	Payment plan	AE B
1.h	Collection	\$ 3,688.00	Payment plan	AE B
1.i	Repossession	\$ 7,334.00	Settled for \$3,500, in payment plan to begin 11/2013	Tr. 29-30, 55-56
1.j	Collection	\$ 61.00	Paid 2010, disputing	Tr. 30, 56
1.k	Credit card	\$ 1,894.00	Disputing as not her account	Tr. 30, 57
1.l	Collection	\$ 410.00	Duplicate of 1.c	Tr. 30-31, 64
1.m	Collection	\$ 1,013.00	Same as SOR ¶ 1.f ¹³	Tr. 30-31, 64
1.n	Credit Card	\$ 7,968.00	Payment plan	AE B; Tr. 31, 66
1.o	Collection	\$ 264.00	Disputing as not her account	Tr. 31, 68-69

Applicant testified that she recently paid the debts in SOR ¶¶ 1.c - 1.e and that she was waiting for verification of her payments.¹⁴ She has not provided proof of her payments. She also testified that she is disputing the debts in SOR ¶ 1.f, 1.j, 1.k, 1.m, and 1.o with the assistance of the debt resolution company. She had just begun this process with the company and did not provide proof that she was disputing these debts.¹⁵

¹³Applicant testified that this debt was included in her payment plan with the debt solution company, but this account is not listed in the contract. AE B. Based on the October 4, 2011 credit report information, the original creditor is the same creditor identified in SOR ¶ 1.f. Applicant is disputing this account.

¹⁴Tr. 26-27, 56-57.

¹⁵Tr. 27, 30-31, 50-51, 57.

Applicant's earnings statement reflected that she completed payment of a garnishment as of March 7, 2013. She explained that this garnishment paid off the debt owed on her husband's repossessed car. With the payment of this garnishment, her monthly net income increased by approximately \$700.¹⁶

Applicant earns \$3,832 a month in gross income, not including overtime, and she receives \$2,412 a month in net income. Her monthly expenses total \$1,965 based on the budget she prepared with the debt consolidation company. She agreed to pay the debt consolidation company \$359 a month, leaving \$88 a month in discretionary income. Applicant testified that she regularly works overtime and that since her overtime work has been consistent, she expects it to continue. With her overtime, she can pay her obligations. Applicant has \$800 in savings, and she no longer uses credit cards. She pays two small loans through payroll deductions. She does not have a car payment.¹⁷

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 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, 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 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An

¹⁶GE 3, p. 18-19; Tr. 82.

¹⁷GE 3; AE B; Tr. 83-84.

applicant has the ultimate burden of persuasion for obtaining 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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

The security concern relating to the guideline 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when her union went on strike in 2006, and she broke her ankle in 2007. She had unexpected expenses in 2009, 2010, 2011, and 2012. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through ¶¶ 20(f), and 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 filed bankruptcy in 1998 following her separation and subsequent divorce from her husband because she could not pay all their bills on her salary. Her more recent financial problems began following a strike in 2006 and her reduction in income while she recovered from a broken ankle. During this time, her husband worked sporadically which added to the financial stress of the household. With his deportation in 2010, she lost whatever income contribution he made to the household. In the last three years, she paid one-time expenses including \$2,000 towards her father's funeral, \$1,200 towards her mother's surgery, \$1,600 for her husband's medical bills, and a garnishment. These expenses absorbed her remaining discretionary income. In 2009, she sought help from a debt consolidation company. She could not meet the required payments because she lacked sufficient household income. In 2011, she again contacted a debt resolution company for assistance, but did not proceed with this company after receiving bad information. She contacted several of her creditors and worked out payment arrangements for some of her debt. Just prior to the hearing, she again contacted a debt resolution company and agreed to a payment plan. The evidence reflects that circumstances beyond her control created her finance problems and that she acted responsibly about some of her debts. She has received some financial counseling and appears to be taking control of her debts through the debt resolution company. She stated that she resolved some of her debts on her own

initiative and she has disputed several debts, which are not hers, but she did not provide supporting documentation. AG ¶¶ 20(b)-20(e) are partially applicable.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s more recent financial problems began with a union strike and a broken ankle. Unexpected expenses related to her father’s funeral, her mother’s surgery, medical bills and a garnishment, as well as the loss of her husband’s income to the household, contributed to her inability to pay most of her remaining debts until recently. Circumstances largely beyond her control created her financial problems. Her monthly income limited how much of her debt she could resolved at any given time. The garnishment ended several months ago, giving her more monthly income to pay her debts. A few days before the hearing, she contracted with a debt resolution company for assistance with resolving her debts. Applicant is taking the right steps towards the resolution of her debts. While she said that she paid several small debts, she has not provided proof of her payments, nor has she provided documentation to show that she made her first payment under her debt resolution plan. Likewise, she did not provide proof that she was disputing the debts in SOR ¶¶ 1.f, 1.j, 1.k, and 1.o or that she made the payments under her independently negotiated settlement of the debt in SOR ¶1.i. Without this documentation, she has not shown a track record for resolution of her outstanding debts whether by payment or removal following dispute. Her debts remain a security concern. I recognize that she has worked at her job and held a security clearance for many years without incident. However, these factors are insufficient to overcome the Government’s case or to relieve her of her duty to resolve her debts. She needs more time to get her finances in order.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her finances under Guideline F.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p-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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge