



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



In the matter of:)
)
) ISCR Case No. 11-14754
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On March 21, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 16, 2013, and requested a hearing before an administrative judge. The case was assigned to me on July 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 9, 2013. I convened the hearing as scheduled on August 29, 2013. The Government offered

exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified, and she offered exhibits (AE) A through K, and they were admitted into evidence without objection. The record was held open until September 11, 2013, to provide Applicant the opportunity to present additional exhibits, which she did. They were marked AE L and M and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on September 9, 2013.

Procedural Issues

Department Counsel moved to amend the SOR as follows:

- 1.x-the amount alleged is \$4,100, it is changed to \$6,800.
- 1.y-the amount alleged is \$754, it is changed to \$729.
- 1.z-the amount alleged is \$522, it is changed to \$156.²

There was objection and the motion was granted.

Findings of Fact

Applicant denied all the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old. She is not married and has no children. She earned a bachelor's degree in 1993. She has worked for her employer, a federal contractor, for 22 years and has held a security clearance since at least 1997. She has lived at her current residence since 1998.³

The SOR alleges Applicant has 27 debts totaling approximately \$38,000. Applicant attributes her financial problems to medical conditions. They caused her to have several extended hospital stays; numerous surgeries; expenses for co-payments; and out-of-pocket expenses for prescriptions, medical supplies, in-home care, and oxygen. She continues to suffer from severe asthma and other medical maladies. In the past three years, she has had 12 medical procedures or surgeries. She accumulated many medical bills beginning in 2002, but her medical problems became extreme in 2010. Applicant has medical insurance with a \$2,150 deductible. She has a \$5,000 deductible for non-network provider services. She has a healthcare spending account that helps defray some of her out-of-pocket expenses. She continues to receive her full pay when she is out on disability and unable to work. Applicant provided a list of

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 107-110.

³ Tr. 137.

medical bills she has been paying that are not reflected on the SOR. She also attributed her financial problems to costly repairs she had to make on her home.⁴

The debt alleged in SOR ¶ 1.a is a medical debt (\$821). Applicant disputes the debt. In December 2011 she paid \$350 to the original creditor, a hospital. She wrote the creditor a letter, and they provided an itemized bill that does not reflect her payment. Through her post-hearing submissions, she indicated the creditor advised her that the account is being managed by another creditor. The new creditor advised Applicant the account shows a zero balance. Applicant provided a bank statement with her notations showing \$5.53 was paid to the original creditor listed on SOR ¶ 1.a. It is unclear if this satisfies the remaining amount owed. Applicant is actively attempting to resolve this debt.⁵

At her hearing, Applicant testified that she had a payment settlement plan with the creditor to pay \$50 a month for the debts listed in SOR ¶¶ 1.a and 1.c through 1.p.⁶ In Applicant's post-hearing submissions, she indicated that the medical debts in SOR ¶¶ 1.c through 1.l and 1.n through 1.p are being settled through the plan. Applicant made an initial payment of \$74.55 and then will make 18 monthly payments of \$50 to satisfy the debts. She provided proof she made the initial payment.⁷ The medical debt in SOR ¶ 1.m (\$103) was paid in August 2013.⁸

The debt in SOR ¶ 1.b (\$255) is a credit card account. Applicant testified the account had been turned over to a collection company. Through her post-hearing submission, she indicated the collection firm also owns the debt in SOR ¶ 1.y (\$729). She made \$75 payments on the debt in SOR ¶ 1.b throughout 2012. She provided a letter indicating the debt was settled in full. In May 2013, she paid the debt in SOR ¶ 1.y with two payments of \$379. Both debts are resolved.⁹

The debt in SOR ¶ 1.q (\$8,323) is a charged-off credit card debt. The collection firm that is handling the account had another delinquent credit card debt that it was attempting to collect from Applicant. Applicant indicated that the firm agreed to settle the other credit card debt for \$3,000 and advised her that she would receive an IRS form 1099C for the amount of the debt that was canceled. Applicant paid the \$3,000 settlement in December 2012. Applicant indicated in her post-hearing submission that the collection firm indicated that because she paid the \$3,000 and was also paying two other delinquent debts (one of which was SOR ¶ 1.q) through their firm that they would

⁴ Tr. 32, 46-50, 56-71, 88-89; Answer to SOR; GE 3; AE A E, J, M.

⁵ Tr. 42, 45, 50-52, 71, 75-76, 95-97; GE 4, 5; AE L at pages 1, 9-10.

⁶ Tr. 43-44; GE 4, 5; AE L at pages 2-4, 9-10.

⁷ GE 4, 5; AE L at pages 2-4, 14-19.

⁸ Tr. 45, 71 79; GE 4, 5; AE L at page 3, 20.

⁹ Tr. 52-56, 79-81; GE 4, 5; AE L at pages 2,11-13, 58-60.

dismiss the debt in SOR ¶ 1.q without prejudice. She will receive an IRS form 1099C for this debt. She provided the supporting documents.¹⁰

The debt in SOR ¶ 1.r (\$10,018) is a charged-off credit card debt. Applicant has a settlement payment plan with the creditor. She began the plan in February 2013. The settlement payment plan calls for her to pay \$450 a month for ten months. She has made all of her monthly payments to date and will complete the plan in November 2013. She has been advised that an IRS form 1099C will be issued for the amount of the debt that is canceled.¹¹

The debt in SOR ¶ 1.s (\$2,106) is a charged-off credit card debt. Applicant paid \$1,790 on August 5, 2013. She indicated the creditor accepted this amount as paid in full for the debt. She provided supporting documentation of her payment.¹²

The debt in SOR ¶ 1.t (\$2,628) is a charged-off credit card. Applicant paid \$2,981 on August 2, 2013. The debt is paid in full. She provided supporting documentation.¹³

The debt in SOR ¶ 1.u (\$4,843) is a charged-off credit card debt. Applicant provided a letter stating the debt was settled on May 31, 2013. It does not reflect how much was paid.¹⁴

The debt in SOR ¶ 1.v (\$244) is for a charged-off store account. Applicant paid the full amount owed on the account on August 22, 2013.¹⁵

The debt in SOR ¶ 1.w (\$1,214) is for an account placed for collection. She made two payments of \$380, and the account was settled in August 2013.¹⁶

The debt in SOR ¶ 1.x (\$6,800) is a store account placed for collection. Applicant made monthly payments of \$150 beginning in early 2013. She then made two payments of \$1,000 to settle the debt. The debt was settled in March 2013. She will receive an IRS form 1099C for the amount of the debt canceled.¹⁷

¹⁰ Tr. 81-94; GE 3, 4, 5; AE L at pages 4, 21-24. The amount of the actual delinquent debt is unknown.

¹¹ Tr. 98; GE 4, 5; AE L at pages 4, 25-32.

¹² Tr. 98-100; GE 4, 5; AE L at pages 5, 33-35.

¹³ Tr. 100-102; GE 4, 5; AE G, L at pages 5, 36-39.

¹⁴ Tr. 104-105; GE 4, 5; AE L at pages 5, 40-42.

¹⁵ Tr. 105-106; GE 4, 5; AE L at pages 5, 43-44.

¹⁶ Tr. 106; GE 4, 5; AE G, H, L at pages 5, 45-49.

¹⁷ Tr. 110; GE 4, 5; AE L at pages 6, 50-57.

The debt in SOR ¶ 1.z (\$156) is for a charged-off account. Applicant disputed that the debt indicating she paid the debt in full in November 2011. She requested the credit bureaus remove the debt from her credit report. She requested a letter to confirm that the debt was paid in full, but has not yet received it. She provided a confirmation number.¹⁸

The debt in SOR ¶ 1.aa (\$810) is for an account placed in collection. Applicant made four payments of \$202 from May through August 2011. She provided proof of the payments.¹⁹

Applicant took out a \$9,400 loan from her 401k pension account in July 2013 to help pay her debts. Over the years she spent a lot of money to do necessary repairs on her house. She is making \$100 installment payments to the IRS for her 2012 federal income taxes. She owed \$2,800 for the 2012 tax year. She maintains a written budget to track her expenses. She recently purchased a new vehicle for \$37,000. Her monthly payments are \$479. Her current annual salary is approximately \$94,000.²⁰

Applicant had her mortgage modified in March 2012 due to her medical conditions, which lowered her payments and allowed her to pay some of her delinquent debts.²¹ In 2011 and 2012, Applicant worked with a debt payment company, but found that it charged exorbitant fees and then did not follow through on what it promised. She canceled her account with the company in January 2013.²²

Applicant has received numerous awards throughout her career.²³ She received positive performance evaluations.²⁴ She provided character letters that reflect she is a person of good moral character. She conducts herself with integrity. She is hardworking, dedicated, respected, trustworthy, reliable, motivated, a self-starter, and conscientious.²⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹⁸ Tr. 114-116; GE 4, 5; AE L at pages 6, 61.

¹⁹ Tr. 115-116; GE 4, 5; AE L at pages 7, 62-67.

²⁰ Tr. 121-137; AE E, F.

²¹ GE 3.

²² Tr. 85-87, 95; GE 1, 3.

²³ AE B.

²⁴ AE C.

²⁵ AE D.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 and 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 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 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had 27 delinquent debts, totaling approximately \$38,000, that she was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

AG ¶ 20(a) is not established because Applicant's debts are numerous, recent, and some are still being resolved. Applicant attributed her history of financial problems to her numerous medical issues, surgeries, and out-of-pocket expenses. She also attributed her financial problems to costly repairs she had to make on her home. These things were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant was receiving her full pay while she was out of work, so her income was not impacted. She has a high deductible for her medical insurance, but she also earns a substantial salary and is single. Applicant had more than ten credit cards that were past due, delinquent, or charged off. Although her medical problems had an impact on her ability to manage her finances and caused her to have out-of-pocket medical expenses, she was also using her credit cards beyond her ability to make timely payments. She made an effort to pay some of her bills before she received the SOR, but she did not act completely responsibly with her finances. AG ¶ 20(b) partially applies.

Applicant has paid, settled or resolved many of her delinquent debts. She has payment plans in place for all but one of the remaining debts. There are clear indications her financial problems are being resolved and under control. AG §§ 20(c) and 20(d) apply. Applicant is actively disputing the debt in SOR ¶ 1.a. She has contacted the original creditor and the collection company. AG ¶ 20(e) applies.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old. She has had numerous medical problems and surgeries over the past several years. Some of her medical expenses were not covered by insurance, and she had out-of-pocket expenses. She had to make substantial repairs to her home. Her serious medical conditions affected her ability to manage her finances for a period of time. Applicant incurred numerous credit card debts that were charged off. She has now paid most of her delinquent debts. She has a payment plan for her medical expenses. She has settled or paid in full her other debts. She has a legitimate dispute with one medical creditor. Applicant has gained an understanding about the importance of maintaining her finances. She is acting responsibly toward resolving her remaining debts. Her finances are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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:	FOR APPLICANT
Subparagraphs 1.a-1.aa:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge