



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



In the matter of:)	
)	
)	ISCR Case No. 12-01994
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

02/28/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On September 17, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOD acted 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)

Applicant answered the SOR on October 18, 2013, admitting all of the SOR allegations except subparagraphs 1.d and 1.k. She requested a decision on the written record instead of a hearing. On November 18, 2013, Department Counsel prepared a

File of Relevant Material (FORM). Applicant received it on November 29, 2013, and filed a response on January 13, 2014. The case was assigned to me on January 24, 2014.

Findings of Fact

Applicant is a 44-year-old single woman with one child, age 16. She was married from 1992 to 2002. The marriage ended in divorce. (Item 3 at 11) Applicant has physical custody of her child. She has a high school diploma. Since 2008, Applicant has worked for a defense contractor as an information technology asset manager. (Item 3 at 12)

The SOR alleges that Applicant has approximately \$27,000 of delinquent debt including two delinquent car notes, totalling \$23,000 (subparagraphs 1.a and 1.i), three utilities totalling approximately \$860 (subparagraphs 1.b, 1.d, and 1.j), two credit cards totalling approximately \$2,000 (subparagraphs 1.e, 1.f), three medical bills, totalling approximately \$650 (subparagraphs 1.c, 1.h, and 1.k), and a \$267 bill owed to a property management company (subparagraph 1.g).

In April 2006, Applicant financed the purchase of a car. (Item 8 at 12) She fell behind on the payments in November 2006. (Item 8 at 11) It was later repossessed. (Item 8 at 14) The date of the repossession is unclear from the record. When it was repossessed, Applicant owed a balance of \$13,202, as set forth in subparagraph 1.a. (Item 8 at 14) Since then, it is unclear whether this balance was satisfied through a resale, or whether it was charged off. (*Compare* Item 8 at 12 with Item 8 at 14)

In December 2006, Applicant financed the purchase of another car. (Item 8 at 12) She fell behind on the car payments in April 2007. (Item 8 at 12) The account balance was approximately \$10,200, as referenced in subparagraph 1.i. The car was later repossessed. The date of the repossession was unclear from the record. As of October 2011, it had been “legally paid in full for less than the full balance.” (Item 8 at 14)

Applicant has not contacted the creditor listed in subparagraph 1.a. Her goal is to contact this creditor after she satisfies the smaller debts. Applicant purchased another car in 2010, financing it with a \$7,500 loan. (Item 2 at 14; Item 6 at 2) She satisfied this loan in 2013. (Item 6 at 2)

Applicant satisfied subparagraphs 1.b through 1.d. (Response at 8, 13; Item 2 at 8) These debts totalled approximately \$600. Applicant also satisfied subparagraph 1.f,¹ (Response at 6), and subparagraph 1.g. (Response at 10)

Applicant contends she paid subparagraph 1.h with an electronic funds transfer of \$109.76. (Item 5 at 13) She provided inconclusive evidence that the bill she paid corresponded with the bill alleged in subparagraph 1.h.

¹Subparagraph 1.e is a duplicate of subparagraph 1.f. (*Compare* the matching account numbers listed in the November 2011 credit report (the third creditor listed in Item 8 at 8) with the account number in the correspondence from the creditor confirming payment included in the Response at 6.)

The debt listed in subparagraph 1.j, totalling \$714, stems from a contractual dispute over whether Applicant's cell phone coverage included unlimited text messaging. (Response at 3) Applicant provided no evidence corroborating her contention that these text messaging charges were erroneous.

Applicant does not recognize the \$70 medical bill listed in subparagraph 1.k. It remains outstanding.

In addition to satisfying her car loan, unlisted in the SOR, in 2013, Applicant also satisfied debts, totalling approximately \$650, owed to three other unlisted creditors.² (Item 5 at 13; Response at 12)

In 2002, Applicant was diagnosed with bipolar disorder. There is no record evidence that this condition posed any problems for the first three years after the diagnosis. Then, In 2005, Applicant was the victim of a brutal assault, and in 2006, her father passed away. Applicant then lapsed into severe depression, and became suicidal. (Item 5 at 19, 21) During this period, she ignored her bills. (Item 4 at 25) In September 2006, she voluntarily went to the hospital for observation. Her physician changed her medication and discharged her. Since being released from the hospital, her bipolar condition has posed no further problems.

Applicant attributes her financial struggles, in part, to the episode of depression in 2006, and the difficulty raising her child as a single parent. (Item 4 at 25) Also, at or about the time Applicant was struggling with depression, her then employer transferred her to another department where she earned substantially less income, and later fired her in October 2007 after she violated the company's policy prohibiting profanity in the workplace. (Item 3 at 31) She remained unemployed until March 2008. (Item 4 at 24-25)

Applicant maintains a budget. She has approximately \$340 in monthly discretionary income. She has \$6,000 invested in a 401k account. (Item 5 at 7)

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 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 ¶

²The debts are as follows: a \$125 move-out fee, a \$327 medical bill, and a miscellaneous bill for \$246.

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). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Over the past eight years Applicant has defaulted on two car notes and incurred several other delinquent debts. AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

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.

Applicant's testimony established a reasonable basis for disputing the cell phone bill listed in subparagraph 1.j, but she failed to provide evidence substantiating the basis of her dispute. AG ¶ 20(e) does not apply. Similarly, she provided insufficient evidence to support her contention that she paid subparagraph 1.h. These bills, together with the bill she did not recognize (subparagraph 1.k) are nominal, as they total less than \$1,000.

There is no evidence that Applicant's financial problems related to extravagant spending. Also, at or about the time Applicant defaulted on the car loans listed in the SOR, she was suffering from depression stemming from a brutal physical assault and her father's death. Moreover, shortly after she purchased a car in April 2006, her employer had reduced her pay. AG ¶ 20(b) applies.

Applicant satisfied approximately \$2,400 of the SOR debts and \$650 of unalleged debts. Also, she recently satisfied the car note on an automobile that she purchased in 2009. The most serious delinquencies, the two defaulted car loans, occurred seven years ago. The car loan listed in subparagraph 1.a was either paid through a resale or charged off, and Applicant no longer owes any money toward the second automobile loan, as listed in subparagraph 1.i, because the debt was legally paid in full for less than the full balance. Whether the debt was charged off or satisfied through a resale of the collateral does not lessen the negative security ramifications of the default. (ISCR Case No. 01-09691 (App. B. March 27, 2003) at 2) However, the fact that Applicant owes less than the amount alleged lessens the vulnerability to coercion and the likelihood of the problem's continuation.

Given the nature and circumstances of how Applicant incurred her debts, the amount satisfied thus far is sufficient to establish a demonstrated track record of financial reform. On balance, I conclude that AG ¶¶ 20(a), 20(c), and 20(d), apply, and that Applicant has mitigated the financial considerations security concern.

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.

Applicant's most serious debts occurred approximately seven years ago when she was battling clinical depression and had experienced a pay cut at work. Since then,

her finances, her health, and her employment have stabilized. Although her discretionary income remains modest, she has managed to establish a sufficient track record of financial reform for me to conclude that she has mitigated the financial considerations security concern.

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.k: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge