



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



In the matter of:

ISCR Case No. 12-08319

Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Department Counsel

For Applicant: *Pro se*

10/13/2016

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. She had 13 collection accounts,¹ which totaled more than \$34,000. She has been able to satisfy some of her delinquent obligations and is working to address the remainder. She has sufficiently rebutted or mitigated the Government's security concerns under the financial considerations guideline. Clearance is granted.

¹ In three of the collection accounts the same delinquent obligation is listed under two collection accounts. SOR 1.a and 1.f, SOR 1.e and 1.k, and SOR 1.j and 1.l, are the same delinquent debts attempting to be collected by two different collection agencies. The amount alleged owed after removing the duplications is approximately \$26,000.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DoD) Directive,² the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on November 22, 2013, detailing financial considerations security concerns.

On December 14, 2013, Applicant answered the SOR and requested a hearing. On June 17, 2015, the DOHA issued a Notice of Hearing for the hearing to be convened on July 8, 2015. On June 30, 2015, for good cause shown, that hearing was cancelled. On September 18, 2015, a Notice of Hearing was issued for the hearing convened on October 8, 2015.

At the hearing, Government's Exhibits (Ex) 1 through 6 and Applicant's Exhibits A and B were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Five documents, Ex. C through G, were admitted without objection. On October 16, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In her Answer to the SOR, Applicant admitted the debts with explanations. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact.

Applicant is 56 years old and is seeking to obtain a security clearance. In February 2012, she obtained employment with the company sponsoring her application for a security clearance. (Ex. 2, Tr. 16) She served honorably in the U.S. Army from September 1978 through October 1979. (Ex. 1) She is legally separated from her husband, a retired U.S. Army master sergeant. (Tr. 19, 20, 47) Applicant receives 20% to 30% of her husband's military retirement, which amounts to \$640 per month. (Tr. 50)

Applicant's current annual salary is approximately \$36,000. (Tr. 48) She has \$6,000 in her savings account and 401(k) retirement plan. (Tr. 53, C-11, C-27) Her delinquent obligations are set forth in four credit reports: November 2011, September 2013, February 2014, and April 2015. (Ex. 3, 4, 5, 6) In her November 2011 Electronic Questionnaires for Investigations Processing (e-QIP), she lists five delinquent accounts totaling more than \$14,000.

Between January 2009 and October 2011, Applicant was employed 8 months and unemployed 27 months. (Ex. 2) Applicant has had four periods of unemployment:

² 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

January 2009 through May 2009, October 2009 through June 2010, September 2010 through May 2011, and from July 2011 through October 2011. (Ex. 1, 2) Between May 2009 and October 2011, her total employment was ten months. (Ex. 1) During 2012, she received just over \$15,000 in unemployment compensation. (Ex. 2)

In two of her jobs, Applicant paid for a payment protection plan to assist her in the event of job loss. (Ex. C-22) However, when she did suffer job loss, the company contracted to assist her at the time of her loss of income, failed to honor the agreement and refused to pay her bills. (Ex. 1, Tr. 24) A class action lawsuit was commenced against the creditor listed in SOR 1.c and 1.d, for failing to honor their payment protection plan. (C-22, Ex. 2, Tr. 24) This may explain why the company chose to charge off both accounts. (Ex. 6)

Due to the sporadic nature of her employment, Applicant is reluctant to enter into long-term repayment plans. Her preferred plan is to save up money and attempt to address a debt when she has saved sufficient funds. (Tr. 27)

Applicant suffers from lupus and moderate mitral valve prolapse. (Tr. 18) With her current job she has health insurance covering her medical expenses. (Tr. 19, Ex. C-1, D-1) Her health insurance costs \$1,000 for each three months of coverage. (Tr. 20) In March 2008, she and her 16-year-old daughter moved to be closer to her family and lived in her parent's vacant home. (Ex. 1) She stayed in the home until her parents reoccupied the home. When she moved, her daughter was a high school senior. Applicant's daughter joined the U.S. Air Force. Applicant's son later joined her. Her son, now 30 years old, suffers from Asperger's Syndrome, a form of autism. (Tr. 42) He joined the military and was recycled in basic training three times before being sent home. (Tr. 44) He is now attending nursing school. (Tr. 45) Applicant is paying his educational bills, which are \$3,000 per semester. (Tr. 47, 58)

In 2012, Applicant was working as a contractor. (Tr. 16) Her position did not require a clearance, but did require her to have what she referred to as a "green" badge. (Tr. 16) Due to the Government shutdown, work at that location ended. She moved to her daughter's home³ in another state in hopes of better employment possibilities. (Tr. 16) She found a non-governmental job, which paid her \$5,000 a month. However, after working a month she would be off for a month or two. This schedule made taking college classes impossible and also made obtaining repayment plans with creditors difficult. After a year with the company, she has been given a full-time schedule as of October 2015. (Tr. 17) Before being hired as a permanent employee, she worked "as needed" for the company, which also made financial planning more difficult. (Tr. 20)

In October 2013, when Applicant answered financial interrogatories, she indicated she had turned her delinquent accounts over to her attorney who had settled five accounts. (Ex. 2) She hired him in May 2012. (Ex. C-14, C-28) She paid him \$3,000

³ Applicant lives in a recreational vehicle (RV) parked in her daughter's driveway. (Tr. 29)

to have him help her with her finances. (Ex. C-14, C-15, C-18, C-19, Tr. 24, 27, 51) She did not receive much assistance in return for her investment. (Tr. 27)

Applicant received an income tax refund after timely filing her 2011 federal income tax return, but her husband failed to file his return. She incurred a penalty when she withdrew funds from her 401(k) retirement plan. She makes \$80 monthly payments to the IRS and paid more than \$2,000 on her tax obligation. Following payments made in 2015, the IRS notified her in August 2015 that her 2011 federal income taxes had been paid in full. (Ex. C-10, C-25, C-26) There is no state income tax charged in her home state.

Applicant had a home improvement credit card with an \$800 limit (SOR 1.a, \$1,663). Late fees, over-limit fees, and interest doubled the amount owed. When she was laid off from work, as previously stated, a finance company failed to honor the payment protection plan. (Tr. 31) As of December 14, 2015, settlement in full had been made on this account. (Ex. C-22, C-23, C-24, Ex. G, Tr. 31) This debt is also listed under SOR 1.f, and it is a duplicated debt. (Ex. 3, 5)

Applicant was notified she owed a cell phone bill (SOR 1.b, \$1,315). She never opened the account, but another woman had used her Social Security number to fraudulently obtain service. (Tr. 26) She offered to settle the debt for \$600, but when the collection firm checked with the telephone company, the telephone company acknowledged that Applicant had not opened the account. However, in the fall of 2015 the same telephone account again appeared on her credit report. (Tr. 26) In December 2015, she settled the debt, and the creditor agreed not to pursue further collection on the account. (Ex. F)

Applicant had two credit cards with the same company (SOR 1.c, \$1,872 and SOR 1.d, \$1,000) One card was for her daughter with a \$300 limit and the other for her son with a \$500 limit. (Tr. 33) She asserts she paid these debts with the assistance of her attorney. (Tr. 33) However, on her latest credit report both accounts are listed as written off, one in the amount of \$1,400 and the other in the amount of \$1,710. (Ex. 6)

In August 2007, Applicant opened a credit card for her daughter to obtain a pet (SOR 1.g, \$1,830). (Tr. 34) The creditor offered to settle this debt for two payments of \$990 each. She accepted the offer and made the required payments on May 31, 2012, and June 30, 2012. (Ex. 2, Ex. C-14, C-20, 21, Tr. 34)

At the hearing, Applicant asserted she never had an account with the creditor listed in SOR 1.e (\$3,000). (Ex. 2, Tr. 33) Her November 2011 credit report indicates a zero balance on the account and states, "Resolved Reported by Grantor." (Ex. 3) This debt is also listed under SOR 1.k as a duplicate debt. (Ex. 6) Her April 2015 credit report also lists a zero balance owed on this account. However, \$4,507 is listed as past due by the collection agency (SOR 1.k, \$4,207) which is attempting to collect on a debt owed the creditor listed in SOR 1.e (\$3,000). (Ex. 6)

In June 2009, Applicant's brother introduced her to an individual who, for a short period of time, moved in with Applicant and her daughter. (Tr. 23) The individual was an alcoholic and was financially dependent on her. (Ex. 2) The individual started pawning and selling Applicant's goods. He also damaged her goods with a hammer. (Ex. 2) In August 2009, she moved to a new town to get away from the individual. (Ex. 1) Before obtaining a restraining order against the person, the individual stole her car and damaged the engine. (Ex. 2)

At some point, the individual moved into his own apartment. He asked Applicant to be at the apartment to meet the utility company employee so the electricity could be turned on. (Tr. 22) Unknown to the Applicant, the other individual had asked the electric company to add Applicant's name to the account. (Tr. 23) Although she took no financial responsibility for the electric bill, the electric company wants her to pay the bill (SOE 1.h, \$769). (Ex. A, Tr. 23) The creditor refused to dismiss the debt when Applicant was unwilling to aid in the prosecution of the other person. The April 2015 letter from the creditor states the creditor was looking to Applicant for payment of the utility bill (Ex. B) The creditor agreed to remove the credit bureau entry once the debt is paid. (Ex. B, Tr. 63) Applicant has now paid the debt. (Ex. A, B, C 9, Tr. 25, 63)

Applicant had a health-care credit card (SOR 1.i, \$7,105). (Tr. 33, 35) The account was used to pay for medical treatment for herself, her daughter, and her son. (Tr. 35) The original debt was \$4,281 and the balance is now \$7,105. (Ex. 5, 6) The account has not yet been addressed. It does not appear on her April 2015 credit report; however, it is listed on her November 2011, September 2013, and February 2014 credit reports as having been transferred to another creditor.

There were two collection accounts owed to the same collection firm (SOR 1.j, \$5,183 and SOR 1.k, \$4,207). Her credit report indicates the debt in SOR 1.l was purchased by another creditor and currently has a zero balance. (Ex. 6) The debt is now held by the creditor listed in SOR 1.j and has not been paid. She owed a collection agency \$1,020 (SOR 1.m) for a cell phone and internet debt incurred in July 2009. (Ex. 3) Applicant claims she had the service turned off when she moved and never received a final bill. She asserts she never received any calls or letters concerning this debt. The debt appears on her November 2011 credit reports, but not on her September 2013, February 2014, or April 2015 credit reports. (Ex. 3, 4, 5, 6)

In October 2015, Applicant's daughter and her daughter's five children moved in with Applicant when her daughter's husband was arrested, jailed, and is now pending trial. (Ex. C) She has recently paid more than \$3,500 to assist her daughter in paying legal fees and other expenses. (Ex. C-2 – C-5) Applicant's vehicle is paid for. She is not receiving calls or letters from creditors demanding payments. (Tr. 28) She has paid non-SOR debts (Ex. C-6, C-7, C-8) and numerous accounts in her credit reports are listed as satisfactorily paid. (Ex. 3, 4, 5, 6)

Applicant's most recent credit report lists three unpaid collection accounts totaling \$11,900: SOR 1.c, \$1,872; SOR 1.j, \$5,183; and SOR 1.k, \$4,207. (Ex. 6)

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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 avoided drawing 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, 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 as to 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 the 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

Adjudicative (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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly 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 under agreed upon terms. Absent evidence of strong 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 so as to meet her financial obligations.

Applicant's history of delinquent debt is documented in her credit reports, her interview by an Office of Personnel Management (OPM) investigator, her SOR response, her response to interrogatories, and her testimony. Applicant owed approximately \$26,000 on ten collection accounts. 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(a) – (e) 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;

(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.

Of the 13 SOR collection accounts, three are duplications of the same debts. Applicant paid an additional four debts. Her most recent credit report, April 2015, lists three delinquent SOR obligations totaling less than \$12,000 that Applicant has yet to address. One debt (SOR 1.e, \$3,000 and SOR 1.k, \$4,207, which are the same debt) was incurred for moving expenses. The medical collection account (SOR 1.i) does not appear on her most recent credit report, and on the other three creditor reports, it is listed as transferred or sold. It does not appear on the credit reports under a different collection agency.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by periods of unemployment, the actions of an individual she lived with for a short period of time, and the failure of a company to honor its payment protection plan. Only three accounts remain as delinquent on her most recent credit report. The debts that were incurred for medical treatment, home repair, and moving to a new location in hope of better job prospects do not cast doubt on her judgment. The ten debts were incurred starting in 2009. The number of debts was not large and less than \$12,000 remains to be paid. The three remaining debts do not cast doubt on her current reliability, trustworthiness or good judgment. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced medical problems, unemployment, financial difficulties caused by another, and by the financial company failing to honor its agreement to pay her debts when she became unemployed, which are factors beyond her control. When she was unable to pay her debts, she sought assistance from an attorney who helped her address some of her delinquent obligations. With her erratic work schedule, she has been unwilling to enter into long-term repayment plans. She has addressed the majority of her delinquent accounts and, under the circumstances, has acted reasonably. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶ 20(d), Applicant sought assistance from an attorney when she was unable to pay her debts. She has paid those debts that she was able to pay with her limited financial resources. Her latest credit report lists only three debts of concern that she was unable to address and those three debts total less than \$12,000. AG ¶ 20(c) and ¶ 20(d) apply.

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 the 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. She incurred medical expenses for herself, her daughter, and son. She also incurred moving expenses in hopes of finding better job prospects. An additional debt was incurred in repairing her home. None of the debts appear extravagant. She was not living beyond her means. She lives in an RV parked in her daughter's driveway. Her employment over the past few years has made it difficult to enter into long-term settlement agreements. She was working one month and then was off for a month. Since becoming a permanent employee, her work schedule has improved, and she has made progress paying her debts. She has established a track record of debt resolution.

The issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial considerations.

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, Financial Considerations:

FOR APPLICANT

Subparagraphs 1.a –1.m:

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.

CLAUDE R. HEINY II
Administrative Judge