



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



In the matter of:

ISCR Case No. 14-05608

Applicant for Security Clearance

Appearances

For Government: Ray T. Blank, Esq. Department Counsel
For Applicant: *Pro se*

03/09/2017

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. The Statement of Reasons (SOR) lists delinquent obligations totaling approximately \$54,000. A delinquent mortgage and student loans have been satisfactorily addressed. However, the majority of the remaining delinquent debts have yet to be addressed. Applicant has not sufficiently rebutted or mitigated the Government's security concerns under the financial considerations guideline. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DoD) Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued an SOR on

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance*

March 23, 2015, detailing financial considerations security concerns. On May 12, 2015, Applicant answered the SOR and requested a hearing. On February 17, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing to be convened on March 1, 2016.

At the hearing, Government's Exhibits (Ex) 1 through 6 and Applicant's Exhibits A through J were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional documents were admitted, without objection, as Ex. K. On March 10, 2016, DOHA received the hearing transcript (Tr.).

Findings of Fact

In her Answer to the SOR, Applicant denied the allegations of delinquent debts. She stated some of the debts had been paid and had attempted to communicate with other creditors. After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 54-years-old engineering laboratory technician seeking to obtain a security clearance. (Tr.58) In February 2013, she obtained employment with the company sponsoring her application for a security clearance. (Ex. 1) She has had full-time employment since 1999. (Tr. 15) Applicant's current annual salary is approximately \$ 55,000. (Tr. 35) She has \$14,000 in her 401(k) retirement plan. (Tr. 59)

Co-workers, supervisors, and friends state Applicant is highly qualified for her job, she is honest, trustworthy, loyal, dedicated and committed to her work, has the highest integrity, and is a very valuable asset to the company. (Ex. J) They indicate she is a self-starter and is always looking for ways to improve herself. She received an award recognizing her dedication and outstanding performance. (Tr. 32) She received an accomplishment award, a team award for an outstanding job, and other awards for her outstanding job in representing the company. (Tr. 33) Her duty evaluations indicate she meets or exceeds expectations. (Ex. I)

Applicant's delinquent obligations are set forth in the four credit reports: April 2013, May 2014, March 2015, and November 2015. (Ex. 2, 3, 4, 5) In her March 2013 Electronic Questionnaires for Investigations Processing (e-QIP), she listed a judgment and various financial delinquencies for auto loans, medical bills, student loans, and a mortgage. The SOR lists approximately \$51,000 in delinquent debt. (Tr. 18)

Applicant has a daughter age 35. (Ex. 1) In 2001, she separated from her husband pending divorce. (Ex. 6) In 2001, she filed for Chapter 7 bankruptcy protection as a result of the divorce. (Ex. 6) A tax liability was incurred when her husband had

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.

insufficient tax withheld from his salary. The bankruptcy discharged a portion² of the taxes owed and in 2002, her \$3,500 tax refund was intercepted and applied to her tax debt. (Tr. 25) There is no allegation of taxes currently owed.

Following the bankruptcy, Applicant's finances were sufficiently good to qualify her to obtain a loan for the home she purchased in October 2005. (Ex. 6) She purchased the home for approximately \$70,000 with \$600 monthly payments. (Ex. 3) In March 2011, she stopped making her mortgage payments, but continued to live in the home, without making payments, for an additional 19 months, until October 2012. (Ex. 5, 6, Tr. 63) She attempted a short sale on the property. (Tr. 24) In March 2012, an offer was received to buy the home for \$65,000, which is what she owed on the home. (Ex. 6) Mortgage company delays cause the potential buyer to withdraw the offer.

Applicant then attempted a deed in lieu of foreclosure. (Tr. 24) The mortgage company reported \$15,171 past due (SOR 1.k) on the mortgage. The house went to foreclosure in early 2015. (Tr. 62) For tax year 2014, Applicant received an Internal Revenue Form 1099-C, Cancellation of Debt in the amount of \$28,019. (Ex. K) Her March 2015 and November 2015 credit reports reflect a zero balance and zero past due on the mortgage. (Ex. 4, 5)

In 2006, 2008, and 2009, Applicant experienced medical problems. (Tr. 15) She got behind on her finances following the medical issues and her daughter and granddaughter moved in with her. (Tr. 23) In June 2006, Applicant was injured in a lawn mowing accident that required knee surgery. (Ex. 6) In August 2006, she purchased a new vehicle when her vehicle experienced transmission problem. (Ex. 6) The car cost \$18,505 with monthly payments of approximately \$400. She made timely monthly payments until August 2012, when the vehicle experienced engine problems. (Ex. 6, Tr. 24, 44) Six payments remained on the loan. The vehicle was repossessed and the lender has charged-off approximately \$3,000 (SOR 1.j). (Ex. 2)

Applicant stated that in 2006 her finances were tight but she was meeting her obligations until October 2006 when emergency gall bladder surgery and shortly thereafter, a MRSA³ infection caused her to be out of work until mid-January 2007. (Ex.

² Bankruptcy proceedings allow a tax debt of greater than three years to be discharged under limited circumstances. Applicant's federal tax debts meet the Internal Revenue Service (IRS) criteria for discharge under Chapter 7 of the Bankruptcy Code. See Nolo website, (In general, three criteria must be met before tax debts are discharged: (1) The return was due at least three years before the bankruptcy is filed; (2) The return was filed at least two years before the bankruptcy is filed; however, the return must be accurate; (3) A tax lien must not be attached to any property; and (4) The taxing authority must have assessed the tax (entered the liability on the taxing authority's records) at least 240 days before the bankruptcy is filed.), <http://www.nolo.com/legal-encyclopedia/tax-debt-chapter-7-bankruptcy.html>. (Hearing Exhibit 1)

³ MRSA stands for methicillin-resistant staphylococcus aureus and is an infection caused by a strain of bacteria that is resistant to the antibiotics commonly used to treat ordinary staph infections. MRSA infections typically occur in patients who have been in a hospital or other health care settings.

6, Tr. 22, 25) Her health insurance did not cover all of her medical expenses. The SOR⁴ lists nine medical debts totaling approximately \$3,200.

Applicant had a credit card on which she made timely payments until 2010, when she last made a payment on the account (SOR.1.l, \$1,024; SOR 1.i, \$1,331). (Ex. 6) Until 2010, she made timely payments on another credit card account (SOR 1.m, \$945; SOR 1.r, \$1,663), when she made her last payment. There are two different amounts listed in the SOR, but Applicant asserts she had a single credit card with the lender. (Tr. 45)

In July 2007, an attorney obtained a \$196 judgment (SOR 1.q) against Applicant for services provided when Applicant sought advice concerning custody of her granddaughter. (Ex. 6) The debt remains unpaid. (Tr. 48) Applicant has not had recent contact with the attorney. (Tr. 48) In August 2015, she received temporary guardianship of her granddaughter. (Tr. 35)

In October 2007, Applicant's daughter and two grandchildren moved in with her. In February 2008, she was out of work 12 weeks when she had knee replacement treatment. (Ex. 6) The three medical debts referenced in SOR 1.a (\$198), 1.b (\$895), and 1.c (\$265) were combined into a single debt, which Applicant paid in April 2015. (Ex. A, Tr. 28) In June 2012, the medical provider obtained a judgement (SOR 1.p, \$196) for the amount not covered by Applicant's health insurance. Applicant asserts this is the same medical debt as 1.a, which she paid. (Tr. 47) She has medical insurance through her job, but still has a yearly deductible and co-payments to make. (Tr. 72)

The largest of Applicant's delinquent obligations (SOR 1.n, \$22,474) is collection account on her student loans. (Ex. 6) In 1985, Applicant obtained \$6,000 in student loans to attend a technical institute. In 1990, the payment was to commence on the loans. (Ex. 6) From 1990 through 2002, Applicant's income tax refund was intercepted and applied to her student loan debt. (Tr. 24) In 2013, she paid \$2,548 in interest on the loans. (Tr. 52) Her student loan was brought out of default after she made 12 to 14 timely payments on the note, and the note was transferred to a different entity for collection. (Tr. 46)

When Applicant had foot surgery, she went on short term disability which paid her eighty percent of her salary, she asked for six months forbearance on her student loan. (Tr. 60) Applicant did not indicate when the forbearance occurred. As of April 2016, she was current on her \$145 monthly payments on her student loan, (Ex. K, Tr. 47) As of February 2016, \$23,633 was owed on the loan and there was no past-due amount then owing. (Ex. K) The amount owed on the debt had increased \$1,055 from March 2015 until April 2016. (Ex. 4, K) Applicant failed to provide any documentation as to how much she has actually paid on the loan since the loan was transferred to the current holder of the note.

⁴ DC acknowledges that SOR 1.l and 1.i, SOR 1.d and 1.o, and SOR 1.g and 1.h are duplications of the same obligations. (Tr. 16, 29)

Applicant owes a telephone company \$681 (SOR 1.d and SOR 1.p, which are the same debt) for equipment she failed to return when she moved. (Tr. 38) The debt has not been paid. The \$1,331 debt listed in SOR 1.i, and duplicated in SOR 1.l, has not been paid. (Tr. 42) The \$1,270 collection account (SOR 1.s) remains unpaid. (Tr. 49)

Applicant owes approximately \$2,800 on ten collection accounts owed to the same collection company: SOR 1.t, \$1,011; SOR 1.u, \$314; SOR 1.v, \$297; SOR 1.w, \$282; SOR 1.x, \$232; SOR 1.y, \$229; SOR 1.z, \$161; SOR 1.aa, \$131; SOR 1.cc, \$122; and SOR 1.dd, \$28. Applicant sent a letter disputing the debts and asking the amounts to be verified. (Tr. 51) The response stated the debts were returned to the hospital. (Tr. 53) Applicant has made no payments on the debts.

In Applicant's May 2013 personal subject interview (PSI), the SOR debts were discussed including her numerous small medical debts. When she completed her PSI, she was living pay check to paycheck and not making any payment on her delinquent accounts. (Ex. 6) She was considering participating in a consumer credit counseling service and setting up a plan to start repaying her debts. She has contacted her creditors, but found it difficult to make payment arrangements on the larger debts. (Tr. 34) Her current monthly disposable income (gross income less expenses) is \$127. (Ex. H, Tr. 61) She does not have any credit cards. (Tr. 84)

Applicant had some on-line credit counseling, which involved reading material, watching videos, and taking a quiz. (Tr. 29) The information related to budgeting, understanding credit and credit reports, identity theft predatory lending, banking relationship, and setting financial goals. (Ex. G, Tr. 30) Applicant is current on her five-year-old vehicle. (Tr. 35) She has recently moved to a more affordable home that will have lower utility bills due to better insulation. (Tr. 35)

Applicant was informed of the necessity to provide documentation supporting her assertions that delinquent obligations has been paid and to provide documentation as to the current status of the debts.

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 Guideline (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, and her testimony. Applicant owed approximately \$54,000 on two judgements and 24 collection, charged-off, delinquent, or unpaid 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;⁵
- (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.

⁵ This number does not include the four duplicate accounts, which were counted as one delinquent obligation.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

In 2014, the lender discharged \$28,019, which was the amount Applicant owed following her foreclosure (SOR 1.k). She lived in her home 19 months, from March 2011 until October 2012, without making her monthly mortgage payments. The home went to foreclosure and the lender cancelled the debt in 2014. This fails to show good faith or that she acted reasonably. She is current on her student loan, an obligation that was at one time serviced by the lender in SOR 1.n (\$22,472). However, she incurred a \$6,000 debt more than thirty years ago and still owes \$23,633 on the loan, which is an increase of \$1,000 over what she owed a year earlier. She has documented payment of one judgement, but not the other. Even after deciding favorably for her on these two obligations and the four accounts which were listed more than once, she still has \$13,352 in delinquent obligations.

Applicant provided documentation showing she has paid less than \$2,000 on her debts since her May 2013 interview. She never documented how much she has paid on her student loan since the interview. Even seven of the relatively small delinquent obligations under \$200 each have not been addressed.

The mitigating conditions in AG ¶ 20(a) do not apply. Applicant has been full-time employed since 1999, and employed with her current employer since July 2013. There are numerous delinquent obligations yet to be addressed.

Under AG ¶ 20(b), Applicant experienced medical problems, which is a factor beyond her control and a number of the delinquent obligations relate to medical treatment. However, the majority of her delinquent accounts have not been addressed, and, under the circumstances, she has not acted reasonably. AG ¶ 20(b) does not mitigate the financial considerations concerns.

Under AG ¶ 20(c), Applicant has received some on-line financial education, but the majority of the debts remain unpaid. Under ¶ 20(d), she paid one judgement (\$1,196), which included SOR debts 1.a (\$198), 1.b (\$895), and 1.c (\$265). The student

loan (SOR 1.n, \$22,472) was transferred to a new lender for collection. AG ¶ 20(c) applies to these four debts.

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. Applicant's coworkers speak highly of her duty performance and her character. After thirty years Applicant's student loan is three times the amount borrowed, but she is current on the payments and there is no past-due amount. She lived in her home 19 months without making her monthly mortgage payments.

Applicant's annual household income is approximately \$55,000, and she has documented little payment on her delinquent obligations. She has been aware of the Government's concern about her delinquent debts since her May 2013 interview when she was specifically confronted about each of her delinquent accounts now listed in the SOR. Additionally, the March 2015 SOR put her on notice of the Government's concern about her delinquent accounts. She has failed to established repayment agreements to address the delinquent debts, except for her student loan obligation on which her monthly payments are current.

Applicant has failed to mitigate the security concerns arising under the financial considerations guideline. This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if

Applicant has paid her delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed her past-due obligations, she may well demonstrate persuasive evidence of her security worthiness.

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 questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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: AGAINST APPLICANT

Subparagraphs 1.a –1.c:	For Applicant
Subparagraphs 1.d –1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i –1.j:	Against Applicant
Subparagraphs 1.k –1.p:	For Applicant
Subparagraphs 1.q –1.dd:	Against 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.

CLAUDE R. HEINY II
Administrative Judge