



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



In the matter of:)	
)	
)	ISCR Case No. 14-06127
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2016

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant’s financial problems were caused by circumstances beyond her control, there is not sufficient evidence indicating that they are either resolved or under control. Clearance is denied.

Statement of the Case

On September 13, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, Personal Conduct. 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) implemented by the DOD on September 1, 2006.

On September 22, 2015, Applicant answered the SOR, admitting all of the allegations in SOR Paragraph 1 except subparagraphs 1.b, 1.t, and 1.u. She did not

respond to the Paragraph 2 allegations.¹ Applicant requested a hearing, and the case was assigned to me on April 11, 2016. DOHA issued a notice of hearing on June 6, 2016, scheduling the hearing for June 22, 2016. The hearing was held as scheduled.

Department Counsel submitted five exhibits that I identified and received as Government Exhibits (GE) 1 through 4. I identified and received six exhibits that Applicant submitted (AE A - F). At the close of the hearing, I left the record open, at Applicant's request, to allow her the opportunity to submit additional exhibits. Within the time allotted, she submitted one additional exhibit that I admitted and incorporated into the record as AE G. DOHA received the transcript (Tr.) on June 30, 2016.

Findings of Fact

Applicant is a 36-year-old single woman. She is a high school graduate who earned an associate's degree in business administration, and she earned a college degree, in the same field, in 2012. Applicant works as a contract personnel security specialist. (Tr. 16) She has been doing this type of work since 2003. (Tr. 17-18)

In March 2012, Applicant was laid off. She remained unemployed for the next two and a half years until she obtained another job in September 2014. While unemployed, she relied upon her savings, together with unemployment compensation, and help from her mother to make ends meet. (AE 2 at 2) She was unable, however, to keep up with her bills.

By 2015, she had incurred approximately \$53,000 of delinquent debt, as alleged in the SOR. Since late 2015, Applicant has been in contact with her creditors, attempting to satisfy her debts entirely or satisfy them through payment plans. Currently, she has satisfied the following:

Subparagraph	Amount	Date Satisfied	Cite
1.c	\$536	unknown	AE G at 9
1.g	\$301	6/27/16	AE G at 10
1.n	\$160	10/20/15	AE D

In June 2016, Applicant contacted the creditor of the debt listed in SOR subparagraph 1.o, totalling \$1,363. Applicant settled this account, agreeing to pay \$50 on June 23, 2016, and \$149 monthly, thereafter. (AE G at 5-7) She made the first payment, as agreed. (AE G at 5)

Applicant owes a creditor approximately \$12,000 on four accounts listed in SOR subparagraphs 1.a, 1.l, 1.m, and 1.q. In June 2016, she negotiated a \$3,600 settlement

¹Department Counsel subsequently withdrew Paragraph 2 at hearing.

(reduced from \$4,153) for the account alleged in SOR subparagraph 1.a. Under the settlement, she agreed to repay the debt in \$600 monthly increments, beginning in July 2016. (GE 11) Under another agreement with this creditor, Applicant agreed to repay one of the accounts in \$150 increments, beginning in July 2016. (AE G at 12) The corresponding account that Applicant agreed to repay through this agreement is unclear from the record.

The record includes settlement offers from the creditors of the debts alleged in SOR subparagraphs 1.e and 1.h. (GE 13-14) There is no evidence of whether Applicant has accepted either offer. The remainder of the record consists of nominal, miscellaneous payments to some of the other SOR creditors.

Applicant has federal and state income tax delinquencies from tax years 2013 and 2014. (Tr. 52) Her federal tax delinquency totals \$9,000. She is satisfying this debt through a \$135 monthly garnishment. (Tr. 51-52) Her state income tax delinquency totals \$5,000. She is satisfying this debt through \$152 monthly increments. (Tr. 52)

Applicant attributes her inability to make sustained debt reduction progress to her lengthy unemployment. (AE A) Although she remains unemployed, a prospective employer has extended an offer contingent on her gaining a security clearance. Applicant intends to more aggressively satisfy her debts once she begins this job. Also, once Applicant begins this job, her mother will help her satisfy her debts by lending her \$20,000. (AE B) Applicant has approximately \$4,000 remaining in her savings account. (AE A)

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 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Applicant's history of financial problems triggers the application of AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debt.

Applicant's financial problems were caused by a lengthy period of unemployment. Through a combination of savings and unemployment compensation, she has satisfied the debts alleged in SOR subparagraphs 1.c, 1.g, and 1.n. She has settled the account listed in SOR subparagraph 1.o, and she has recently begun executing the agreement, beginning with the first payment in June 2016. These steps are sufficient to resolve these subparagraphs in her favor, and to trigger the application of AG ¶¶ 20(b) and 20(d).

Applicant contends that she will begin paying her other debts once her employer, who has made her a contingency offer, hires her, and she begins work. Then, her mother will lend her \$20,000, which she will use to satisfy the debt. Typically, promises to pay debt absent a demonstrated track record of debt repayment have minimal probative value. However, I am mindful of Applicant's continuing unemployment as she awaits the outcome of her security clearance application. She deserves some credit for taking the initiative to resolve her debts, despite her unemployment. Nevertheless, in light of the amount of the delinquencies and the conditional nature of her payment plan, it is too soon to conclude that her financial problems are under control. AG ¶ 20(c) does not apply.

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 financial problems were caused by circumstances largely beyond her control. However, given the nature, extent, and seriousness of her financial problems, it is too soon to conclude that she has rehabilitated her finances. I conclude that Applicant has failed to carry the burden.

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
Subparagraphs 1.a - 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d - 1.m:	Against Applicant
Subparagraphs 1.n - 1.o:	For Applicant
Subparagraphs 1.p - 1.u:	Against Applicant
PARAGRAPH 2, Guideline E:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

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.

MARC E. CURRY
Administrative Judge

