



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



In the matter of:)
)
) ISCR Case No. 15-00241
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

09/30/2016

Decision

CERVI, GREGG A., Administrative Judge:

Applicant mitigated the financial considerations. Personal conduct concerns were not established. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86) on December 17, 2013, requesting a security clearance. After reviewing the application and information gathered during a background investigation, the Department of Defense (DOD) Consolidated Adjudications Facility sent Applicant a statement of reasons (SOR) dated August 28, 2015, explaining it was unable to find that it was clearly consistent with the national interest to grant eligibility for access to classified information. It detailed security concerns under Guideline F, financial considerations and Guideline E, personal conduct.¹

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining*

Applicant responded to the SOR on September 15, 2015, and January 15, 2016, and requested a hearing before an administrative judge. The case was assigned to me on April 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5, 2016, scheduling the hearing for June 16, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 and Applicant Exhibit (AE) A were admitted into evidence without objection. Applicant testified at the hearing. DOHA received the hearing transcript (Tr.) on June 23, 2016. The record was held open for Applicant to submit additional information. She submitted exhibits AE B through M, which were admitted without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor. She has worked for her current employer since 2014. She currently holds a security clearance. She was awarded an associate's degree in information technology in 2005. She has been married since 2002, and has four children between the ages of 9 and 16. She served on active duty in the U.S. military from 1998 to 2001 and received a general discharge because of financial misconduct. She also served in the National Guard from 2002 to 2004, and was honorably discharged.

The SOR alleges 27 delinquent debts that total about \$45,000. These include her student loans, which amount to about \$37,000. Applicant's actions with respect to the SOR allegations and the current status are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Phone Utility; \$430	Settlement offer and installment payment made	Paying in installments
1.b Pet Hospital; \$306	Paid 6/27/2016	Resolved
1.c Phone Utility; \$1,865	Settlement offer. No evidence of payments to date.	Offer of settlement
1.d Phone Utility; \$302	Paid 6/22/2016	Resolved

Eligibility for Access to Classified Information (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaced the guidelines in Enclosure 2 to the Directive.

1.e Medical; \$109	Paid 6/21/2016	Resolved
1.f Student Loan; \$7,487	Consolidated and paying monthly installments	Paying monthly installments
1.g Student Loan; \$5,940	Consolidated and paying monthly installments	Paying monthly installments
1.h Student Loan; \$5,864	Consolidated and paying monthly installments	Paying monthly installments
1.i Student Loan; \$4,819	Consolidated and paying monthly installments	Paying monthly installments
1.j Student Loan; \$4,403	Consolidated and paying monthly installments	Paying monthly installments
1.k Student Loan; \$4,398	Consolidated and paying monthly installments	Paying monthly installments
1.l Student Loan; \$1,566	Consolidated and paying monthly installments	Paying monthly installments
1.m Student Loan; \$1,474	Consolidated and paying monthly installments	Paying monthly installments
1.n Student Loan; \$865	Consolidated and paying monthly installments	Paying monthly installments
1.o Rental; \$738	Applicant claims paid, but creditor no longer has record of payment or debt	Resolved
1.p Student Loan; \$738	Consolidated and paying monthly installments	Paying monthly installments
1.q Collection/City; \$438	Applicant claims paid, but creditor no longer has record of payment or debt	Resolved

1.r Collection/City; \$222	Applicant claims paid, but creditor no longer has record of payment or debt	Resolved
1.s City Collection; \$1,004	Spouse disputed in 2014; no longer on Credit Bureau Report (CBR)	Disputed
1.t Collection; \$316	Disputed with collection agent	Disputed
1.u Collection/Cable; \$973	Applicant turned-in equipment; creditor attempting to locate	Disputed
1.v Collection; \$801	Paid through insurance; creditor no longer shows debt	Resolved
1.w Medical; \$63	Applicant unable to locate creditor; removed from CBR	Disputed
1.x Collection; \$31	Paid 6/23/2016	Resolved
1.y Public Library Collection; \$112	Paid 6/25/2016	Resolved
1.z Phone Utility; \$441	Paid 6/22/2016	Resolved
1.aa Phone Utility; \$1,600	Paid 6/21/2016	Resolved

Applicant's debts were incurred and exacerbated by periods of unemployment, underemployment and her husband's inconsistent work history from 2002 to 2014. She was laid-off in March 2014, and resumed work in May with a new employer. She left the job in June 2014 as she was grieving her father's passing. She was hired in her current position in September 2014, where she remains. During difficult periods, she used unemployment benefits and severance pay to meet household expenses when possible. Applicant's debts include expenses incurred by her husband and children's expenses. Over the past two years, her spouse has been steadily employed and is now contributing to the family income.

Applicant has made substantial efforts to resolve a majority of her delinquent debts through monthly payments, pay-offs, or legitimate disputes. Her efforts include

consolidation of her student loans into manageable monthly payments. She submitted a CBR from May 2016, which shows four deleted accounts as a result of investigations, and resolution of accounts as listed above. All other credit accounts are current and satisfactory. She reduced her cable TV and internet service to the basic plan to reduce costs but meet the needs of her children, and no longer carries a cell phone contract. Her children do not have cell phones, and she budgets her income and pays expenses through payment plans. She has a net remainder of about \$200 a month after paying debts and expenses, and saves for unplanned expenses. She has a 401k retirement plan with a balance of approximately \$2,000. She expressed the importance of her job to her and her family and believes she now has control over her finances and is working toward purchase of a home.

Applicant did not disclose her debts or past judgments in her SF 86 (SOR 2.a). She testified that she was unaware of many of her debts when she completed her SF 86, but believed she listed the debts for which she was aware. She cannot explain why the debts she listed did not record on the final SF 86. She also believed she was not required to list debts that she resolved. When interviewed by an Office of Personnel Management (OPM) investigator, she voluntarily gave information on debts she was aware of and believed that she listed in the SF 86, and freely discussed all other debts raised by the investigator. Since she resolved the 2008 judgment (SOR 2.b) for unpaid rent in 2010 for a rental unit that she vacated because it was dangerous to her family, she did not believe she was required to list the debt on her SF 86.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel.” The applicant 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 EO 10865 provides that adverse 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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.

There is sufficient evidence to determine that Applicant's financial delinquencies have been or are being resolved. I find that she initiated good-faith efforts to repay creditors and resolve debts once she became aware of the extent of the delinquencies and seriousness of carrying delinquent debt to her security clearance. She took significant action to contact creditors, dispute and remove debts that were incorrectly recorded on her CBR, consolidate student loans, and make full or partial payments toward others. The majority of delinquent debts have been resolved, are now current or were successfully disputed. By her efforts, her recent CBR reflects overall good credit status. She and her spouse have been steadily employed for the past two years and her spouse contributes to the household income. Her financial issues no longer cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(c), (d), and (e) apply. I am confident Applicant will continue to use her financial resources to pay her obligations on time, and stay ahead of her debts to avoid further delinquencies.

Overall, Applicant's financial problems have been resolved or are under control. I find that the financial considerations concerns have been sufficiently mitigated.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The relevant disqualifying condition in this case is:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.² An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.³

Applicant asserted that when she completed her SF 86, she was not aware of many of her debts, and believed that debts for which she was aware were included in the SF 86. She cannot explain why no debts were listed on the final, signed copy, but denies deliberate falsification. However, she was clearly forthcoming when interviewed by an OPM investigator as she voluntarily disclosed the debts for which she was aware, and freely discussed other debts raised by the investigator. The judgment arising from a disputed rental was satisfied in 2010, therefore Applicant did not believe it was required to be listed on her SF 86. Although applicants are expected to carefully read the questionnaire and answer truthfully, based on the evidence in the record, Applicant's omissions fail to rise to the level of intentional or deliberate falsifications.

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

² See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

³ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

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 Guidelines F and E in my whole-person analysis.

Applicant's financial circumstances reflect those of many who essentially live on a thin margin and have sustained a family with an unreliable income stream. She has a history of financial problems and accumulated debts for which she was unable to pay. However, through substantial efforts, she was able to restore her financial stability through diligent work with creditors, repayment plans, and consolidation of her student loans. Additionally, she and her husband have a two-year steady work history, they are current on debts and expenses, and have been able to accumulate some retirement savings. Although her financial history has been less than ideal, she has shown a renewed effort to maintain her current finances in a satisfactory way and intends to prevent similar financial issues in the future. She does not carry an unreasonable amount of debt and her credit report is satisfactory. I believe her financial troubles are behind her and her continued efforts to maintain her credit have led her to a financially stable future.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations. The Government did not establish personal conduct security concerns.

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
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a and 2.b:	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.

GREGG A. CERVI
Administrative Judge