



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



In the matter of:

ISCR Case No. 15-00862

Applicant for Security Clearance

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/03/2017

Decision

MASON, Paul J., Administrative Judge:

In view of several unanticipated events beyond Applicant's control and her good-faith efforts to repay most of her delinquent debts, she has mitigated the security concerns based on the guideline for financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On April 24, 2014, Applicant signed and certified an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3) On October 31, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). (Item 1) 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 DOD on September 1, 2006.

Applicant furnished her notarized answer to the SOR on November 30, 2015. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the SOR allegations, was sent to Applicant on February 1, 2016. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. She received the FORM on February 7, 2016, as established by her

signature and date located at the bottom of the receipt of acceptance of the FORM. Regarding Applicant's July 2014 personal subject interview (PSI) (Item 5) of the FORM, Applicant was advised that she could make corrections to the PSI to improve the exhibit's clarity and accuracy. Alternatively, she could object to the entire PSI because it was unauthenticated by the OPM investigator who conducted the interview. In her March 4, 2016 response to the FORM, she furnished no objection to the PSI. On March 10, 2016, Department Counsel interposed no objection to Applicant's response to the FORM. The case was assigned to me on August 11, 2016.

Findings of Fact

The SOR alleges 12 delinquent debts. SOR ¶ 1.a represents a judgment for a residential property timeshare. SOR ¶ 1.l is the balance owed on a repossessed vehicle. The remaining accounts are credit cards. Applicant admitted all the listed accounts except for SOR ¶ 1.l. She provided documentation showing that the lien on the car was released in July 2015 and she received the car title. (Item 6; answer to SOR)

Applicant is 37 years old. She has been married since July 2008, and has a four-year-old daughter and a one-year-old son. She received a bachelor's degree in August 2008 and master's in December 2008. She has been employed as a senior operations engineer since January 2009. She explained that part of the reason for her delinquent debts was her husband's unemployment and underemployment between November 2009 and November 2011. She also provided extensive documentation of her childrens' hearing and respiratory expenses shortly after their birth in 2012 and 2014. Her student loan debt was repaid by wage garnishment between 2013 and 2014. (Item 3 at 47; Items 4, 6; Answer to SOR; Response to FORM)

SOR ¶ 1.a - In Applicant's answer to the SOR, she admitted owing this judgment and promised to establish payments. The documentation provided does not prove that an official dispute was filed with the credit agency. (Items 4, 6; response to FORM, attachment A) The judgment is unresolved.

SOR ¶ 1.b - This credit card account was transferred to a collection agency (SOR ¶ 1.c) in July 2011. Applicant has established a payment plan and has made two payments of \$107 in January and February 2016. The account is being resolved. (Items 4, 6; response to FORM, attachment B)

SOR ¶ 1.d - This credit card account was transferred to a collection agency in March 2014. (SOR ¶ 1.i) Applicant negotiated a payment plan in November 2015 (not 2016 as indicated), and has made one documented payment of \$165 to reduce the balance to \$3,073. (Items, 4, 6; response to FORM, attachment F) The account is being resolved.

SOR ¶ 1.e - This credit card account was transferred for collection in March 2014. (SOR ¶ 1.h) Applicant provided documentation showing that she disputed the debt, but the account is under investigation. (Items 4, 6; response to FORM, attachment E) The account is unresolved.

SOR ¶ 1.f - This credit card account was transferred for collection in June 2013. Applicant provided documentation proving that the account was settled for \$290 in November 2015. (Items 4, 6; response to FORM, attachment C) the account is resolved.

SOR ¶ 1.g - This credit card account was transferred for collection in March 2012. In November 2015, Applicant began making monthly payments of \$80. In March 2016, the balance was reduced to \$860. (Items 4, 6; response to SOR, attachment D) The account is being resolved.

SOR ¶ 1.j - This credit card account was transferred for collection in March 2014. This account appears to be a duplicate of SOR ¶ 1.h. The account is resolved in Applicant's favor.

SOR ¶ 1.k - This credit card account was transferred for collection in September 2011. A judgment was filed against Applicant in November 2013. As with SOR ¶ 1.a, Applicant has not provided sufficient documentation showing that she formally disputed the account with the credit agency. She did not dispute the account until January 2016, after admitting the account in her answer to the SOR. (Items 4, 6; response to FORM, attachment G) The account is unresolved.

SOR ¶ 1.l - As noted at the beginning of this section, the car lien was released and Applicant has unencumbered title to the car. (Response to SOR) This account is resolved.

Applicant's delinquent debts were not caused by gambling or profligate spending. Her wages were garnished in 2014 to satisfy her unlisted student loan debt. She provided extensive documentation indicating that she incurred about \$16,000 in out-of-pocket medical expense for treatment of her two childrens' hearing and respiratory issues between 2012 and 2014. Applicant has never received financial counseling or debt settlement services. (Items 4, 5, 6; response to FORM)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of general factors known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision. Because this case is decided on the

administrative record, credibility assessments of Applicant are limited to her interview summary, her answer, and her responses to the FORM.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Two pertinent disqualifying conditions are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Two credit reports show that Applicant incurred about \$25,000 in delinquent debt between 2011 and 2014. Applicant has been unable to pay the debt. AG ¶¶ 19(a) and 19(c) apply.

Four potentially mitigating conditions are potentially applicable: AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); AG ¶ 20(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*); AG ¶ 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*); and AG ¶ 20(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 has presented persuasive evidence that demonstrates her delinquent debts were caused by events outside her control. Between November 2009 and November 2011, her ability to pay family bills was negatively impacted by her husband's unemployment then underemployment. In 2012, her first child was born with auditory and respiratory problems. In 2014, her second child encountered the same problems after birth. It is highly likely that the medical issues of Applicant's children led to unlisted student loan debt which Applicant satisfied in 2014 through wage garnishment. Applicant is entitled to full mitigation under the first prong of AG ¶ 20(b).

Applicant receives less weight under the second prong of AG ¶ 20(b) "acting responsibly under the circumstances" because she did not begin the repayment plans until late 2015 or early 2016, after she received the SOR. The second prong of AG ¶ 20(b) is applicable in part.

Though Applicant has never had financial counseling or enrolled in debt consolidation services, she has contacted most of the creditors and established payment plans. To her credit, she resolved her car debt (SOR ¶ 1.I) six months before she received the SOR. The only remaining accounts that Applicant must address are

the two judgments at SOR ¶¶ 1.a and 1.k, and the credit card account at SOR ¶ 1.e. On balance, Applicant receives partial mitigation under AG ¶¶ 20(c) and 20(d).

In order to receive consideration under AG ¶ 20(e), an applicant must substantiate the basis of her dispute of a debt with documentation. Applicant's unsupported claims do not meet the condition.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables of the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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)*.

The final security clearance decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is a married 37-year-old with two young children. She has been employed as a senior operations engineer since January 2009. She has held a security clearance since 2006. She received a bachelor's and a master's degree in 2008.

The record shows that Applicant began facing economic problems between 2009 and 2011 due to her husband's employment issues. Her economic stress continued when her children were born with severe auditory and respiratory problems in 2012 and 2014. Based on her positive action to address the majority of the listed debts, I am confident she will employ the same energy in resolving the two judgments identified at SOR ¶¶ 1.a and 1.l. She should go online and formally dispute the judgments with one of the three credit agencies, specifically because she admitted both debts in her response to the SOR. To demonstrate a good-faith effort to resolve debts, an applicant must do more than simply show she has relied on the passage of time when the debt is no longer unenforceable, then removed from her credit report. A judgment remains on an applicant's credit record for ten years. Considering the evidence as a whole and from a commonsense perspective, Applicant's evidence in mitigation is sufficient to mitigate the security concerns based on the guideline for financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge