



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



In the matter of:)
)
) ISCR Case No. 15-01299
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Department Counsel
For Applicant: *Pro se*

09/09/2016

Decision

NOEL, Nichole L., 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. Applicant's financial problems were caused by events beyond her control, three years of unemployment between 2009 and 2012. Applicant has made arrangements toward the resolution of three of the five alleged SOR debts, representing 94% of the alleged debts. Clearance is granted.

Statement of the Case

On August 22, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke her security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing. On April 4, 2016, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.² Department Counsel provided documents as requested.³ At the hearing, convened on April 26, 2016, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through D, without objection. The record remained open after the hearing to allow Applicant to submit additional information about her finances. She timely submitted AE E through G, which were also admitted without objection.⁴ I received the transcript (Tr.) on May 4, 2016.

Findings of Fact

Applicant, 48, has worked as an engineer for a federal contractor since September 2012. Applicant was initially granted access to classified information in 2007 while working for another federal contractor. She completed her most recent security clearance application in September 2012, disclosing a delinquent student loan account. The ensuing investigation revealed additional delinquent accounts. The SOR alleges that Applicant is indebted to five creditors for approximately \$34,800.⁵

Applicant's financial problems began in 2009, after she was laid off from the federal contractor job she held since 2003. She remained unemployed for the next three years. To ease her financial demands, Applicant moved home with her parents and allowed her son, then a teenager, to live with his father until she was able to get back on her feet. While unemployed, Applicant's bills fell delinquent. Since returning to full-time employment Applicant's financial situation has stabilized and she has been able to accumulate a few thousand dollars in savings. Applicant, who has not used credit cards since 2001 and lives within her means, knew that her student loans were delinquent, but did not learn of the other debts alleged in the SOR until her current security clearance investigation. Applicant, now earning \$80,000 per year, testified that although she had the means to resolve her delinquent accounts, severe anxiety kept her from making progress toward their resolution.⁶

. . . I get anxious when it comes time to pay bills, or if I'm behind, and I get really anxious. . . it's a battle. . . . When I get really, anxious it [exacerbates my other medical conditions]. I just kind of partition that off in my mind, and when that happens it goes away . . . I am not stressed any

² The prehearing scheduling order is appended to the record as Hearing Exhibit (HE) I.

³ The discovery letter, dated November 23, 2015, is appended to the record as HE II.

⁴ AE E.

⁵ Tr. 15; GE 1-2.

⁶ Tr. 16-18, 23, 25-30, 36; Answer.

more, I can breathe, and I'm not panicking. But it also makes things disappear. . . .⁷

Since the hearing, Applicant has contacted her two largest creditors, SOR ¶¶ 1.b (\$5,858) and 1.d (\$26,757), and set up payment plans. To avoid the anxiety and stress of ongoing communication with the creditors, Applicant has set up recurring automatic payments on both accounts. Applicant pays \$250 each month on her student loan account (SOR ¶ 1.d) and \$120 on the account alleged in SOR ¶ 1.b. Applicant attempted to contact the creditor holding the account alleged in SOR ¶ 1.a (\$74), but could not find a working phone number. Instead, Applicant sent a check paying off the account to an address listed in one of the credit reports provided to her by the Government. The two other accounts alleged in the SOR do not appear on the most recent credit report in the record, dated November 2013.⁸

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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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.

⁷ Tr. 19.

⁸ GE 4; AE E-F.

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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”⁹ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant owes approximately \$34,800 on five delinquent accounts, the largest being a delinquent student loan for \$26,757. The record supports a *prima facie* case that Applicant has a history of not paying her bills and, that for several years, she had an inability to do so.¹⁰ However, Applicant’s financial problems were caused by events beyond her control, three years of unemployment after being laid off from a job in 2009.¹¹ Despite dealing with severe anxiety, Applicant has made a good faith-effort to resolve her delinquent accounts. She has taken steps to resolve three of the five alleged accounts, SOR ¶¶ 1.a, 1.b, and 1.d comprising 94% of the alleged accounts.¹² Now employed for four years, Applicant continues to live within her means and her finances are otherwise under control.¹³

After reviewing the record, I have no doubts about her suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). The Appeal Board has held that, “an applicant is not

⁹ AG ¶ 18.

¹⁰ AG ¶¶ 19(a) and (c).

¹¹ AG ¶ 20(b).

¹² AG ¶ 20(d).

¹³ AG ¶ 20(c).

required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.¹⁴ Applicant has done so, thereby mitigating the security concerns raised by her delinquent accounts.

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
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Subparagraphs 1.a – 1.e:	For Applicant
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Conclusion

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

Nichole L. Noel
Administrative Judge

¹⁴ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).