



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-01807
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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.

Applicant responded to the SOR on November 24, 2015, and she elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 28, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and to submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on April 4, 2016, and she provided a response on May 1, 2016. The case was assigned to me on December 5, 2016.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-6. FORM Items 1 and 2, consisting of the SOR and Applicant's response, are pleadings and are entered into the administrative record. FORM Item 4 is an unauthenticated summary of an October 23, 2014 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that she could object to FORM Item 4 and it would not be admitted, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. In her response to the FORM, Applicant raised no objections to any of the Department Counsel's exhibits. Moreover, in light of Department Counsel's advisement and the Appeal Board rulings in ISCR Case Nos. 15-05252 and 14-06781, my *sua sponte* exclusion of FORM Item 4 may constitute error.¹ Therefore, I admitted the Government's Exhibits, identified as FORM Items 3-6, into evidence without objection.

In her response to the FORM, Applicant submitted a letter, mortgage loan statement, and two credit bureau reports, which are admitted without objection as Applicant's Exhibits (AE) A-D.

Findings of Fact

Applicant is 46 years old. She graduated from high school in 1988. She was previously married in 1999 and divorced in 2011. She has two children, ages 11 and 13, who live with her. Since December 1990, Applicant has been gainfully employed full-time, except for three stints of unemployment – August-November 2008; July 2013-February 2014; and June-August 2014. Since August 2014, she has been employed full time by a DOD contractor.²

The SOR alleged 13 debts, totaling approximately \$83,064. In her response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b., 1.c., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.m., however, she contended that some of the admitted debts may be duplicates.³

¹ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016)(Applicant's waiver of the authentication element must be knowing and intelligent. The Judge's exclusion of the Report of Interview, containing mitigating evidence, was found to be error following applicant's appeal.). See also ISCR Case No. 14-06781 at 3 (App. Bd. Dec. 16, 2016)(By not responding to the Government's FORM, "Applicant waived any objection he might have had to this document.").

² Item 3 at 5, 9,10-16, 20, 23.

³ Item 2 at 2-4.

In her response to the SOR, Applicant denied that her mortgage loan account (SOR ¶ 1.a.) was past due in the approximate amount of \$24,296. Applicant's April 2016 credit report shows a \$5,359 payment, reducing the past-due amount to \$3,427. This credit report shows that the mortgage account is approximately 30 days past due. The account history shows consistent payments since January 2015, however, several payments were less than the required scheduled monthly payment.⁴ In her FORM response, Applicant provided a May 2016 account statement showing a \$4,000 payment in April 2016 and the remaining past-due amount of \$804.⁵

Applicant's April 2016 credit report lists ten credit card accounts – SOR ¶ 1.b. (\$6,966); ¶ 1.c. (\$2,902); ¶ 1.e. (\$1,420); ¶ 1.f. (1,090); ¶ 1.g. (\$835); ¶ 1.h. (\$817); ¶ 1.i. (\$6,922); ¶ 1.j. (\$5,607); ¶ 1.k. (\$2,008); and ¶ 1.l. (\$835) – that became delinquent in September/October 2009.⁶ Although Applicant questioned whether the debts alleged in SOR ¶ 1.g. and ¶ 1.l. were duplicates, the record evidence – including account numbers and other account information from the credit bureau reports – does not link the two accounts beyond the account balances. There is no evidence of any payments or other steps taken on these ten accounts since their delinquency.

As to SOR ¶ 1.d., the credit card account charged off in the approximate amount of \$1,769, Applicant claimed that this account was not hers but rather her father's account. Applicant's August 2014 credit report lists that this account was opened in December 1958, well before Applicant's birth.⁷ Applicant has sufficiently demonstrated that this account is not hers.

In about April 2009, a judgment (SOR ¶ 1.m.) against Applicant was entered in favor of a creditor in the approximate amount of \$28,000.⁸ Applicant references a pending court hearing related to this judgment and a monthly payment agreement,⁹ however, there is no further information and no documentation as to payment history or remaining balance.

Applicant explained that her financial delinquencies were caused by her divorce, commencing when her ex-husband left the home in April 2009. Divorce proceedings continued until about August 2013. As a result, Applicant and her ex-husband continued to file joint income tax returns for tax years 2008 through 2013, and they owed approximately \$25,000 in federal income taxes. The loss of her ex-husband's substantial income caused her to make early withdrawals from her 401(k) account,

⁴ AE B at 10.

⁵ AE A.

⁶ AE B.

⁷ Item 6 at 4.

⁸ Item 3 at 38.

⁹ Item 2 at 4; Item 4 at 5.

triggering the federal income tax liability. Applicant apparently entered into an installment agreement with the IRS to repay these delinquent taxes.¹⁰

Applicant references disputes with her ex-husband as to child support and debt payments (including the mortgage), however, Applicant has not provided further information about the dispute and whether it was resolved. In her Answer, Applicant states that her ex-husband owed approximately \$42,000 in child support arrearages as of 2013 and that her ex-husband had been court-ordered to pay a portion of the mortgage.¹¹ Applicant failed to provide any documentation – such as a separation agreement, child support arrearages, or divorce decree – to corroborate these claims.

Applicant sought debt consolidation/financial counseling advice from an attorney in about 2012 to obtain guidance about how to negotiate debt settlements with creditors.¹² Applicant claims that the attorney advised her that the debts would be removed from her credit bureau report in about 2016.¹³ Applicant has not provided any further information as to any contacts with creditors, debt negotiations, payment plans, or payments.

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."

¹⁰ The federal income tax debt has not been alleged in the SOR, however, these circumstances are relevant in mitigation and within the whole-person analysis.

¹¹ Item 2 at 1.

¹² Item 2 at 1.

¹³ Item 2 at 2-4.

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.

Although the Statement of Reasons alleges 13 debts, Applicant provided sufficient evidence that she is not liable for the debt alleged in SOR ¶ 1.d. The remaining 12 delinquent debts total approximately \$58,207. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.¹⁴ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁵ 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.

With the exception of her mortgage payments (SOR ¶ 1.a.), several of which were less than the required monthly payment, there is no documentary evidence of any payments upon the remaining 11 alleged delinquent debts. Applicant provided no specific information or documentation about any payments on her unpaid judgment (SOR ¶ 1.m.). Although Applicant may have consulted a debt consolidation attorney, there is no evidence of further steps taken to resolve her delinquent debts. Because Applicant's debts are ongoing and unresolved, AG ¶ 20(a) is not applicable.

The application of Financial Considerations Mitigating Condition ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond her control and (2) Applicant acted responsibly under the circumstances. Applicant's lengthy divorce proceedings and periods of unemployment constituted circumstances beyond her control that directly impacted her financial indebtedness. These circumstances satisfy the first prong of AG ¶ 20(b).

¹⁴ Directive ¶ E3.1.15.

¹⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

The second prong of AG ¶ 20(b) does not require an applicant to be debt-free or develop a plan for paying off all debts immediately or simultaneously. Applicant took affirmative steps with respect to her mortgage loan modification and payments to significantly reduce the past-due balance, however, there is no evidence of any steps taken with respect to the remaining alleged debts. Applicant contends that several of the alleged delinquent debts may “fall off” her credit report, however, the security concerns associated with these older delinquent debts are not eliminated simply by their removal from her credit report.¹⁶ Here, there is no evidence of any plan for repayment of any debts other than her mortgage beyond letting the older debts “fall off” Applicant’s credit report. Thus, AG ¶ 20(b) does not apply.

Applicant presented evidence that she consulted an attorney about her delinquent debts. There is no record evidence, such as a monthly budget, to conclude that there are clear indications that Applicant’s financial problems are under control. Given Applicant’s debt counseling, AG ¶ 20(c) partially applies.

Applicant’s mortgage loan modification and track record of subsequent mortgage payments constitute good-faith payments to resolve the debt alleged in SOR ¶ 1.a. Although Applicant references a payment agreement on the unpaid judgment (SOR ¶ 1.m.), there is no evidence as to how many, if any, payments have been made. Because there is no evidence of any other debt payments or steps in furtherance of a debt repayment plan, the application of AG ¶ 20(d) is limited to SOR ¶ 1.a.

Because Applicant provided sufficient evidence to demonstrate that she was not liable for the debt alleged in SOR ¶ 1.d., it is unnecessary to address this debt in mitigation. Applicant has not provided any evidence to substantiate a legitimate dispute as to the remaining 12 alleged delinquent debts. Thus, AG ¶ 20(e) does not apply.

Applicant provided substantial evidence as to circumstances beyond her control that directly impacted her financial indebtedness, however, insufficient evidence was provided to conclude that she had a reasonable plan for debt repayment and that her financial problems were being resolved. Thus, I find that financial considerations concerns remain.

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):

¹⁶ See ISCR Case No. 02-14950 at 4 (App. Bd. May 15, 2003)(“The removal of those debts from his credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant’s financial history doesn’t turn on whether Applicant’s debts could or could not be legally listed on a credit report after the passage of seven years.”).

(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. I have incorporated my comments under Guideline F in this whole-person analysis. Circumstances beyond Applicant's control contributed to her financial indebtedness, however, she provided limited information and documentation as to what steps she has taken, beyond her mortgage, to resolve the alleged debts. Because the burden of production and the burden of persuasion fall upon Applicant in mitigation, the totality of the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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:	Against Applicant
Subparagraph 1.a.:	For Applicant
Subparagraphs 1.b.-1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraphs 1.e.-1.m.	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.

Eric H. Borgstrom
Administrative Judge