



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-02143
)
Applicant for Security Clearance)

Appearances

For Government: Alison P. O'Connell, Esquire, Department Counsel
For Applicant: William S. Aramony, Esquire

03/02/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 23 September 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 3 March 2016 and I convened a hearing 28 April 2016. DOHA received the transcript 10 May 2016.

¹Consisting of the transcript (Tr. I), Government exhibits (GE) 1-4, hearing exhibit (HE) I, and Applicant exhibits (AE) A-K. AE K was timely received post hearing. The record closed 12 May 2016, when Department Counsel stated no objection to AE K.

²DoD acted under Executive Order 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) effective within the DoD on 1 September 2006.

Findings of Fact

At hearing, Department Counsel moved to withdraw SOR 1.h-1.k, and I granted the motion (Tr. 91).³ Applicant otherwise admitted the SOR financial allegations, except for SOR 1.d, which she claims to have been unable to locate. She is a 40-year-old program manager employed by a defense contractor since October 2014. She was previously employed on the same contract with a different contractor from November 2003 to October 2014 (Answer).⁴ She seeks to retain the clearance she has held since February 2008 (GE 1, AE K).⁵

The SOR now alleges, and Government exhibits (GE 1-4) substantiate, 10 delinquent debts totaling over \$50,000. Applicant admits all the debts except for a \$150 medical bill (SOR 1.d). The debts consist of \$1,800 in unpaid medical bills (SOR 1.a-1.e), nearly \$22,000 in unpaid credit card bills (SOR 1.f-1.g, 1.m), over \$26,000 in an unpaid second mortgage (SOR 1.l), and an unpaid \$100 insurance bill (SOR 1.n). Applicant paid SOR 1.b and 1.e in October 2015 (AE A, K). She paid SOR 1.c in August 2015 (AE A, K). SOR 1.d apparently aged off her credit reports.⁶ Applicant claims to have paid SOR 1.a in October 2015 (AE K), but her evidence does not fully corroborate that claim.⁷ Applicant's credit reports show a significant number of medical accounts

³Record evidence satisfied Department Counsel that SOR 1.h was a duplicate of SOR 1.m; SOR 1.i had been paid before the SOR was issued; SOR 1.j was a duplicate of SOR 1.d; and, SOR 1.k was a duplicate of SOR 1.b. Account numbers in the credit reports also confirm the duplicates, and SOR 1.h was paid in October 2008 (GE 3).

⁴She worked as a researcher at her previous company from November 2003 to April 2007, at an annual salary of \$39,000. From April-September 2007 she was a junior investigator at the same location (GE 1). In September 2007, she moved to a different part of the state to live with her older sister. However, she was able to stay with her company by transferring to a job as an investigator from September 2007 to February 2008. She was promoted to research analyst in February 2008, with a salary increase to \$42,000. She was promoted to program manager in August 2008, with another salary increase to \$60,000. In December 2011, she received a pay raise to \$70,000 annually, and in March 2014, she received another pay raise to \$90,000 annually. In October 2014, her current company took over the contract, and increased her salary to \$135,000 annually, plus a bonus (Tr. 68-70). She supervises 200 employees (Tr. 25).

⁵According to her April 2014 clearance application (GE 1), her background investigation was completed in October 2003 but she did not receive access in her job until February 2008.

⁶Applicant's April 2014 (GE 3) and February 2015 (GE 2) credit reports show that the last activity on the account was in September 2008, before it was referred for collection in December 2008, which explains why it does not appear on her October 2015 (Answer) or March 2016 (AE A) credit reports.

⁷GE 3 reflects that the medical account alleged in SOR 1.a (GE 2), was originally reported in collection by another collection agent. This collection agent also appears in Applicant's October 2015 credit report (Answer) showing the account unpaid. The account does not appear in Applicant's March 2016 credit report (AE A). AE K shows an October 2015 payment in the approximate amount of the debt alleged in SOR 1.a, made to another collection agent. Applicant's counsel argues that this is merely a name change because both collection agents are located in the same town. However, I find this argument unpersuasive absent some other evidence to show that the account referred to is the same as that alleged in SOR 1.a.

that were in a collection status, but which were paid, and Applicant also paid SOR debt 1.c before the SOR was issued.

Applicant reported six delinquent accounts on her April 2014 clearance application (GE 1), only one of which (SOR 1.m)⁸ exactly matches the SOR by creditor and account number.⁹ In her clearance application, Applicant stated that she negotiated a cancellation of debt with the creditor in November 2013,¹⁰ and expected to claim the amount as income on her 2013 taxes (which would not have been due to be filed until 2014).¹¹ However, she never received the necessary tax form (Tr. 53-56, 93-95). She had no contact with the creditor between 2013 and 2015. When she received the SOR, she contacted the creditor in April 2016 (AE F), and although the debt was no longer legally enforceable, she arranged a repayment schedule, and made the first payment as scheduled (AE K).¹²

On her clearance application, Applicant listed a couple of other debts whose creditors match two of the creditors in the SOR, but whose other identifying information differs from Applicant's or the SOR. She disclosed a credit card account with a complete 16-digit account number, and a \$4,000 delinquent balance. That account appears on Applicant's July 2008 credit report (GE 4) as a collection agent account, with an account number whose eight digits match the first eight digits Applicant listed in her clearance application, with a \$1,451 past-due balance and a \$4,458 total balance. She testified that she settled the account over the telephone in 2013, but the company never credited the account (Tr. 50-51; 87-90). The account was eventually acquired by another collection agency (with an account number that exactly matches the account number reported by Applicant on her clearance application), and Applicant settled the account for less than the full amount in October 2015 (AE D, K). However, the account alleged in SOR 1.f was reported by a different collection agency in GE 3 as being opened in July 2010, and belonging to another bank with an eight-digit account number, no part of

⁸The account first appears as a collection account by a collection agency for the original creditor, in collection by at least June 2008, identified by the first-10 digits of the original creditor account (GE4). The SOR is based on a collection account on behalf of a successor creditor, but using the 16-digit original account number.

⁹She reported delinquent mortgage "accounts" to another creditor, identified by a nine-digit account number that matches the nine digits identifying both first and second mortgages by the creditor in GE 4. The SOR 1.l creditor, the successor-in-interest to the bank reported by Applicant on her clearance application (with the same address) reports the first and second mortgages with the correct first nine digits, but also the important last-four digits that delineate the two accounts. The SOR 1.l creditor reports the first mortgage as settled through foreclosure with no balance due. However, the second mortgage is reported with the balance alleged at SOR 1.l.

¹⁰Applicant's Answer stated that she received a letter from the SOR 1.m collection agency in 2014, telling her the debt would be cancelled and a tax form sent. She testified that she received the letter in 2013 (Tr. 54-55).

¹¹Applicant completed her clearance application four days before the usual April filing deadline, but Applicant would have been eligible for an automatic extension to October 2014 for filing her 2013 taxes.

¹²Two days before the hearing.

which matches the account number reported on GE 4 or the collection agency's payment confirmation (AE K). Thus, Applicant settled the debt she disclosed on her clearance application, but not the debt alleged at SOR 1.f. She mistakenly had a different collection agency taking over the account, which she paid (Tr. 51).

Applicant also listed a bank account account, with a specific complete account number and a \$2,769 balance similar to the bank account alleged at SOR 1.g. However, the account number for SOR 1.g (GE 3) is entirely different from the account number listed by Applicant on her clearance application. Moreover, the bank reported that the account was transferred or sold, and GE 3 later reports that a collection agency picked up an account from the bank with the exact account number reported in the bank entry, having been settled in full for less than the full balance sometime before June 2013. AE E confirms that Applicant paid the collection agent (on behalf of the bank account with the correct corresponding last-four digits) about \$700 in March 2013. This account does not appear on any of the credit reports after April 2014 (GE 3). So in this case, she documented resolution of the debt alleged in the SOR, but not the debt she listed in her clearance application.

Applicant's financial problems are largely attributable to her September 2007 move to another part of the state to live with her older sister. Her sister was in the process of divorcing her husband, but wanted to remain in the family home, something she could not afford without Applicant's financial assistance (Tr. 30, 43). Applicant moved in with her sister and stopped using her credit cards because she had already fallen behind on them (Tr. 34). However, it also appears that she mostly stopped paying them and her mortgages when she moved in with her sister. Applicant paid her sister rent, but her sister also increased the rent every time Applicant got a pay raise. She moved out of her sister's house in February 2015, but continued to provide financial support to her sister for another three months (Tr. 62-64). Her sister sold the house in May 2015. She had promised Applicant some of the proceeds because of her help, but that never happened (Tr. 35). Applicant acknowledges that she would do it differently if she had it all to do over again. Applicant married in October 2015.

Applicant also had a series of medical problems between February 2008 and July 2013. However, she either had health insurance or a health savings account to help with the expenses (Tr.45-46; AE B, C). She acknowledged that her out-of-pocket expenses did not exceed \$1,500 during that time (Tr. 76-77).¹³

When Applicant moved in September 2007, she left vacant a condominium she purchased in May 2002 through the original lender (Tr. 28, GE 4). The first mortgage, along with a second mortgage she obtained in February 2006 was sold to the bank she listed on her clearance application in February 2007. When Applicant moved, she was

¹³Moreover, she apparently did not miss any significant time at work or experience any loss of income as a result of these illnesses. Moreover, a notable part of her debts was for the portions of her medical expenses she would have borne anyway. Her inability to pay her bills was solely her choice.

unable to rent or sell the condominium.¹⁴ Applicant's July 2008 credit report (GE 4) reflects that both her first and second mortgages were 120 days past due, with her last payments in October 2007.¹⁵ Her April 2014 credit report (GE 3) reflects that both mortgages had been transferred to the bank for SOR 1.I, which may have been due to the housing collapse. The lender foreclosed on the first mortgage in August 2008 (Tr. 37-38), which settled that account, but did not resolve the second mortgage alleged at SOR 1.I.¹⁶ She had no contact with the creditor from 2008 until 2013 (Tr. 94). Applicant testified that she contacted the creditor in 2013 when she was gathering information for her upcoming periodic reinvestigation, because she knew that the account had appeared on her 2008 credit report. The creditor told her that it did not have an open account for a second mortgage with a balance (Tr. 38-39). She apparently did not obtain a copy of her credit report, which would have disclosed the debt, as her April 2014 credit report did. After she received the SOR, she reached out to the creditor in October 2015 (Answer) and April 2016 (AE I), but received no response (Tr. 39-40; 92-93).

Applicant entered a debt repayment program in 2008 to address some of her delinquent debts (Tr. 74-75).¹⁷ She paid into the program for about six months, but could not keep up the payments. She did not say what happened to the money she paid into the program. She received an \$8,000-9,000 inheritance in 2011, which she used to pay off some medical bills and to pay off a judgment by a credit card company from April 2009.

Applicant received financial counseling in April 2016, and prepared a budget that includes payment of SOR debt 1.d if she is ever able to locate the creditor, and included prospective payments on SOR debt 1.I (if she is ever able to locate it), and her payments on SOR debt 1.m (Tr. 40; AE H, J). Her second-level supervisor is aware that she had financial problems, but enthusiastically recommends her for a clearance (AE K).

¹⁴Although I realize that September 2007 was on the cusp of the great recession and the collapse of the housing market.

¹⁵This contradicts Applicant's testimony that she continued both mortgage payments into 2008. I consider the credit reports more reliable in this instance because I consider October 2007 delinquency dates more consistent with an August 2008 foreclosure sale.

¹⁶Applicant testified that she received notice from the lender that the condominium was to be sold in August 2008, but she never received any documentation from the lender after the sale. Because she never received any further communication from them, she assumed that the condominium sold for enough to cover both mortgages (Tr. 78-79). However, she made no effort to check.

¹⁷It was the kind of program where you pay the company for a number of months before the company begins negotiating with your creditors.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.¹⁸

Analysis

The Government established a case for disqualification under Guideline F, but Applicant only partially mitigated the security concerns. Applicant became delinquent on a variety of debts between September 2007, when she moved in with her sister to help her sister keep her home, and May 2015, when her sister finally sold the home.¹⁹

Applicant's efforts to address her debts have been only partially satisfactory in resolving the financial issues. Applicant could not locate one of the medical debts probably because it aged off her credit reports, and three of the four remaining medical debts were not paid until after she received the SOR, even if the incomplete identification of the claimed payment for SOR 1.a can be accepted. Therefore, although Applicant has a history of trying to resolve her medical debts, the fact that only one of her medical bills was paid before the SOR was issued leads me to resolve only that medical debt in her favor. SOR 1.g was, by the plain reading of the credit report used to

¹⁸See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁹¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

make the allegation, settled over two years before the SOR was issued, and should not have been in the SOR.²⁰ SOR 1.n was paid after the SOR was issued.

However, the tenuous status of the three unresolved debts (SOR 1.f, 1.l-1.m) continues to raise security concerns. Applicant paid a collection agent for the SOR 1.f creditor almost \$2,500 in October 2015 to settle a charged-off account held by another collection agent for the original creditor since at least June 2008. Applicant reported this original creditor account by matching account number on her April 2014 clearance application, But it is not the same original account—by account number—held by the SOR 1.f collection agent since at least August 2013. Consequently, SOR 1.f remains unresolved. SOR 1.l is a second mortgage that has been delinquent since at least October 2007. It became delinquent when she defaulted on her mortgages after she moved in with her sister to help her keep her home. Applicant documented no efforts to rent or sell the property. She documented no efforts to work with her lender before the August 2008 foreclosure sale, and no efforts after it to learn the status of the two accounts. She assumed that they had both been resolved because she never heard from the lender again. This is irresponsible. She never checked. She stated that when she checked in 2013, the creditor had no record of a second mortgage. Finally, Applicant's April 2014 clearance application fully disclosed the account at SOR 1.m, reporting that the debt had been forgiven, and she was expecting the appropriate tax form to report the forgiveness as income on her 2013 taxes. The form never came, and Applicant never reported the income. She took no action to learn why she never received the tax form. When she received the SOR, she took no action to contact the creditor until two days before the hearing, when she made a payment arrangement and the first payment.

The mitigating factors for financial considerations give Applicant little aid regarding the unresolved debts. While her financial difficulties are both recent and multiple, the circumstances that caused the problem are unlikely to recur.²¹ However, her financial problems were fully due to circumstances within her control—essentially defaulting on her mortgages and ceasing to pay her credit cards—and not handled responsibly. By conflating two collection agencies, she has left SOR 1.f unaddressed. By not following up with her lender after her August 2008 foreclosure or not obtaining a current credit report, she left SOR 1.l unresolved and now cannot get a response from the creditor. By not following up on the proffered debt forgiveness, she left SOR 1.m unaddressed until two days before the hearing.²² While Applicant received financial counseling in April 2016, its timing before the hearing leads me to give it little weight,

²⁰GE 2 showed a bank account with an original high credit of \$2,883, having been transferred or sold with no past-due amount and no balance. The account was quite easily traced to a collection agent who reported the account settled by at least June 2013.

²¹¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

²²¶ 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;

except to note that her budget provides for paying her unresolved debts, including 1.d. But the three unresolved debts that most concern me most are not clearly resolved or under control.²³ Moreover, while I have given credit to Applicant for her efforts to resolve her medical debts and other small debts, as well as the one delinquent credit card, I cannot conclude that her efforts regarding the three main unresolved debts, which after all, constitute most of the remaining SOR debt, constitute a good faith effort to satisfy them.²⁴

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.²⁵ Applicant's efforts to date do not constitute such a plan, and highlight the risks of not taking proactive measures sooner or keeping better records along the way. Debts that are not addressed in a timely fashion, get sold to collection agents, sometimes several times, and sometimes with changes to account numbers that make it difficult, if not impossible, to track the accounts. Accounts age off credit reports, which resolves an applicant's legal responsibility, but does not address security concerns. Credit bureaus change the formats for reporting credit information submitted by creditors, further complicating the tracking process. Applicant has explanations for why these debts remain unresolved, but those explanations do not excuse her failure to have done more to address her debts, starting with having a realistic conversation with her sister in 2007. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant
Subparagraphs c, g:	For Applicant
Subparagraphs d-f, l-n:	Against Applicant
Subparagraphs h-k:	Withdrawn

²³¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

²⁴¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

²⁵ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR.
Administrative Judge