



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-02324
)	
Applicant for Security Clearance)	

Appearances

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

01/27/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

A single mother, Applicant struggled financially to support herself and her young child. Four credit card accounts became delinquent, and 23 medical debts totaling \$1,356 were placed for collection. She defaulted on \$15,768 in student loan debt. Applicant has been making timely payments on her student loans since 2013, and she resolved two past-due credit card debts before they became an issue for her security clearance. She has begun making payments toward her remaining delinquencies. Clearance is granted.

Statement of the Case

On September 23, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action 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 for*

Determining Eligibility for Access to Classified Information (AG) effective within the DOD on September 1, 2006.

On November 5, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 9, 2016, the case was assigned to a DOHA administrative judge to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 20, 2016, the case was transferred to me. On May 19, 2016, I scheduled a hearing for June 14, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 21, 2016.

I held the record open initially for two weeks after the hearing for Applicant to supplement the record with documentary exhibits. On June 16, 2016, Applicant submitted three exhibits, which were entered into the record as Applicant exhibits (AE) A-C without objection. On June 27, 2016, Applicant submitted five additional documents, which were entered into evidence as AEs D-H. The record closed on June 27, 2016, when Department Counsel expressed no objection to her post-hearing submissions.

Findings of Fact

The SOR alleges under Guideline F that, as of September 23, 2015, Applicant owed credit card collection debts of \$919 (SOR ¶ 1.a), \$599 (SOR ¶ 1.i), and \$472 (SOR ¶ 1.j); a charged-off credit card debt of \$697 (SOR ¶ 1.b) and two other charged-off accounts (SOR ¶¶ 1.c and 1.d, amounts not alleged); four student loans in collection totaling \$17,125 (SOR ¶¶ 1.e-1.h); and 23 unidentified medical debts in collection totaling \$1,356 (SOR ¶¶ 1.k-1.gg), 13 of which were \$25 or less. When Applicant responded to the SOR, she denied that the lender identified in SOR ¶¶ 1.e-1.h held her student loans. She admitted the remaining allegations, although she added that some of the debts (SOR ¶¶ 1.i-1.o and 1.ee) were not showing on her credit report. She indicated that she had sent letters to the creditors allegedly holding debts that were not student loans.

After considering the pleadings, exhibits, and transcript, I find that the debt in SOR ¶ 1.c is duplicated in SOR ¶¶ 1.i and 1.j. Additional findings of fact follow.

Applicant is a 37-year-old single mother with a 10-year-old son. She earned her bachelor's degree in May 2001, and she continued to live with her mother while working as a receptionist in the security department for a defense contractor from January 2003 to November 2004. With the investigation of her background for security clearance eligibility still pending, Applicant was terminated for too many personal emails and telephone calls on the job. Apparently shortly thereafter, her clearance eligibility was adjudicated favorably. After a few months of unemployment, Applicant began working as an office administrator for a small defense contractor that was later acquired by her current employer. Her top secret clearance was renewed around July 2009. (GE 1; Tr. 36-37.) In 2010, she became

facility security officer (FSO) when the previous FSO was laid off. The change in position did not come with an increase in her salary until 2012, despite her added responsibilities. (Tr. 58-60.) As of June 2016, there was no classified material at her facility, but she handles security clearance matters and 75% of the employees have security clearance. (Tr. 40-42.)

Applicant was earning \$12 an hour when her son was born in 2006. (Tr. 30.) She struggled financially to support herself and her son without any paternal involvement or financial assistance from her son's father. (Tr. 33-34.) She elected not pursue him for child support because he squandered an inheritance and was in and out of jail, and she did not want his negative influence in her son's life. (Tr. 34, 52.) Applicant had some help with housing in that she continued to live with her mother until June 2014, when she moved into her own apartment with her son.¹ (Tr. 52-53.) When she lived with her mother, she paid her mother rent of \$50 to \$75 per week. At times, she covered electricity and water bills for her mother. (Tr. 54.) Childcare for her son cost her \$200 a week. Her son initially needed full-day kindergarten so that she could work full time. Private kindergarten cost her between \$150 and \$165 per week. After her son started public school, she paid \$88 a week for afterschool care. (Tr. 25-27.) She was paying over \$200 a month on her student loans, which she had obtained in September 1997 for \$2,625 (SOR ¶ 1.h), in September 1998 for \$3,500 (SOR ¶ 1.g), in September 1999 for \$5,500 (SOR ¶ 1.f), and in September 2000 for \$5,500 (SOR ¶ 1.e). (GE 2; Tr. 21, 57, 70.)

Applicant incurred many small medical co-payment debts for prescriptions and doctor visits for her son, who had a recurring medical issue that was not properly diagnosed or treated until January 2013. (Tr. 30-33.) Then unaware that she could arrange for affordable payments to her medical creditors (Tr. 20-21), Applicant allowed several medical debts to go to collections. (GEs 2-4.) Her annual salary in 2010 was about \$35,000. (Tr. 66.) In 2011, she "financially hit the wall" (Tr. 34), and she turned to credit cards to pay for necessities for herself and her son. (Tr. 36.) She started falling behind on her student loans in April 2010, and she defaulted on them in January 2011. (GEs 2, 4.)

To renew her security clearance eligibility, on June 11, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She responded affirmatively to inquiries about any delinquencies involving routine accounts. She listed the debt in SOR ¶ 1.d, which had been charged off for approximately \$300, and the debt in SOR ¶ 1.j, which she indicated was on her credit report as a collection debt of \$472. Applicant explained that she was not sure about the debt because she had not received any mail or telephone calls about the debt. Applicant listed two other collection debts that she had paid in 2013. (GE 1.)

Available credit information shows that Applicant's student loans were in collection as of June 2012. (GE 2.) Recent student loan documentation shows that her present loan servicer is collecting on two accounts opened in April 2013 for \$13,049 and in November 2013 for \$2,719. (AE B.) Applicant has had a record of timely payments since then on her

¹ Applicant testified that her mother told her that she was going to sell the house and move into an apartment, so Applicant had to find another place to live. (Tr. 56.)

student loans. However, as of June 2014, Applicant owed \$919 (SOR ¶ 1.a) on a credit card account charged off for \$751 and placed for collection. She owed \$697 on a charged-off credit card (SOR ¶ 1.b) from 2010. A \$471 charged-off debt from April 2010 (SOR ¶ 1.c) had been sold to the lender in SOR ¶ 1.i, who reported a \$599 balance as of December 2012. However, a subsequent assignee listed the outstanding balance at \$472 as of June 2014 (SOR ¶ 1.j). Another credit card lender (SOR ¶ 1.d) had charged off \$1,000 in March 2011. Applicant paid the debt in May 2013. (GEs 1, 2, 4; AE G.) Several medical debts incurred primarily between 2008 and 2011 and totaling \$1,356 were in collection (SOR ¶¶ 1.k-1.gg). (GE 2.) Applicant was making timely payments of \$297 per month on a car loan obtained in June 2008 for \$12,449. She had a history of late payments on the loan, from 30 to 60 days, although she had been current in her payments since July 2011. (GEs 2, 3.)

On September 15, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about her delinquent debts. (Tr. 23.) The record before me does not include any report from that interview. At the suggestion of her OPM interviewer, Applicant sent letters to the creditors identified in SOR ¶¶ 1.a-1.d, 1.i-1.j, and to a collection entity that might be holding some of her past-due medical debts. She asked for verification of the debts and expressed a willingness to discuss repayment arrangements. The creditors did not respond. (Tr. 22-24, 38.)

As of February 20, 2015, the credit card delinquencies in SOR ¶¶ 1.a and 1.b had not been resolved. Approximately \$1,058 in medical collection debt was still on her credit record. The medical debts in SOR ¶ 1.l and 1.m were no longer on her credit record, although there is no evidence that they had been paid. Applicant was making timely payments on her car loan (balance \$4,355) and on her student loans (balances \$11,814 and \$2,555). (GE 3.) After Applicant received the SOR, she sent another inquiry to the creditors that had not responded to her earlier request for verification. (AE C.) She had received no responses as of her security clearance hearing in June 2016. (Tr. 23-24.)

Applicant's afterschool costs increased by \$20 weekly starting around September 2015 because she began paying for before-school care as well as afterschool care for her son. In previous years, she went into work later but then had to make up the time at night. Additionally, her son had to take a bus to another location for his afterschool program, but his new program was at his school. (Tr. 64-65.) In November 2015, Applicant borrowed \$587 from her mother to pay for new brakes for her car. She has since repaid the loan. (Tr. 61-62.)

Applicant's credit report of December 16, 2015, showed 18 outstanding medical collection accounts totaling \$842 (SOR ¶¶ 1.k, 1.p-1.dd, and 1.ff-1.gg). She owed only two past-due credit card accounts (SOR ¶¶ 1.a and 1.b). Applicant had recently opened \$500-limit credit card accounts in April 2015 and in July 2015 that were rated as current with respective balances of \$490 and \$395. In June 2015, she paid off her car loan with a final payment of \$4,191. (GE 4.) Applicant obtained a loan of \$8,000 from her 401(k) to pay off her car and camp for the full summer for her son. She saved about \$750 from the 401(k) loan in case a creditor responded to her written inquiry about repayment arrangements.

Applicant is repaying the 401(k) loan at \$200 monthly, less than her former car payment of \$297 monthly. (Tr. 49-50, 56.) The 401(k) loan repayment term is five years. (Tr. 57.)

Applicant was making timely monthly payments of \$19 and \$95 on her student loan balances of \$2,422 and \$11,094 as of December 2015. (GE 4.) Student loan payment documents confirm that Applicant continued to make monthly payments totaling about \$121 a month through at least June 2016 to reduce her aggregate student loan balance to \$12,876. (AE B; Tr. 29.) Her monthly scheduled payments increased slightly in 2016 after the loan servicer conducted its annual evaluation of her financial status. (Tr. 57.)

At her hearing in June 2016, Applicant expressed an intention to pay her debts if she could find whom she needed to pay. (Tr. 39.) She estimated that she had about \$500 in discretionary monthly income because of the increase in her salary in 2016. (Tr. 39.) She had not considered calling her son's medical providers about her past-due accounts since they had gone to collections. She assumed she had to contact the collection entities. (Tr. 44-45.)

Applicant contacted her non-student loan creditors shortly after her security clearance hearing. Applicant tracked down the collection entity holding \$440 of her delinquent medical debts, including the debt in SOR ¶ 1.k, which was for pediatric services. Applicant arranged to repay the debts at \$110 per month for four months starting immediately. (AEs A, D, F.) Her first payment on June 14, 2016, paid off the medical debts in SOR ¶¶ 1.r, 1.u, 1.w, and 1.gg. (AE F.)

The creditor collecting her delinquent credit card debt in SOR ¶ 1.a agreed to settle her \$919 balance for \$761, payable in seven monthly payments of \$108. Applicant arranged for automatic deduction of the payments from her checking account starting on June 14, 2016. On June 15, 2016, the creditor confirmed receipt of her first payment. (AEs D, E.) Applicant arranged to make payments of \$50 a month toward the \$697 credit card debt in SOR ¶ 1.b with her first payment to be mailed on June 16, 2016. Applicant learned that the creditor in SOR ¶ 1.j had acquired the charged-off debt in SOR ¶ 1.c (SOR ¶ 1.i, same debt),² and that the debt had been fully satisfied on June 27, 2014. (AEs A, D, H.) Applicant was able to confirm that the debt in SOR ¶ 1.d had been paid off in 2013. (AEs A, D, G.)

With annual pay increases of 2% and a raise in 2012, Applicant's take-home pay has increased over the years from \$1,100 bi-weekly initially to \$1,500 bi-weekly currently. (Tr. 28.) Her annual salary is \$55,000. (Tr. 65.) As soon as her pay is deposited, she pays her bills online before making any other plans for her money. (Tr. 35.) She has a budget in place to ensure that she stays apprised of her obligations and does not become delinquent. (Tr. 35.) Her rent is \$1,125 per month. (Tr. 46.) She has had Internet all along so that she could work from home when her son was ill. When her financial situation became more stable, she acquired cable television service. (Tr. 46-47.) Applicant pays

² Available documentation shows that the debt in SOR ¶ 1.c was sold after being charged off to the collection entity in SOR ¶ 1.i, which then transferred the debt in December 2012 to the collection entity in SOR ¶ 1.j. The debt was paid in June 2014. (GE 2; AE H.)

\$120 per month combined for her cable and Internet service. (Tr. 66.) She has medical insurance through her employer. (Tr. 47.)

Applicant has four active credit card accounts with balances that do not exceed \$1,000 on each. She uses credit cards for necessities and car repairs. (Tr. 48-49.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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 concerns about financial considerations are 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.

Applicant struggled to support herself and her son. She had some help from her mother, who allowed her to live at home at minimal rent. Yet she had no financial support from her son's father. Medical bills for her son of as little as \$5 and \$25 were placed for collections. By June 2014, she owed some \$1,356 in medical collection debt. As of December 2015, 18 medical collection debts totaling \$842 were still on her credit record. Applicant began falling behind on her student loans in April 2010. She made no student loan payments from January 2011 until 2013, commencing repayment after they had been placed for collection. Four credit card accounts became seriously delinquent, although she resolved two of them (SOR ¶¶ 1.c and 1.d) in June 2014 and in May 2013 before the SOR was issued. Two disqualifying conditions, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Concerning mitigation of her delinquent debts, AG ¶ 20(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," is established in that the delinquencies were not incurred recently. However, AG ¶ 20(a) does not mitigate the financial burden of unresolved debt, and Applicant had not made any payments toward the credit card delinquencies in SOR ¶ 1.a or SOR ¶ 1.b or her medical collection debts as of her security clearance hearing in June 2016.

AG ¶ 20(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," applies to some extent in that she had to raise her son on her own without any help from her son's father. While it was her choice not to pursue her son's father for child support, she likely would have had little success in that regard since he was financially irresponsible (e.g., he squandered an inheritance) and he was a repeat criminal offender. Applicant also incurred medical expenses for her son that strained her finances. However, AG ¶ 20(b) does not mitigate the poor financial judgment she exhibited in allowing debts as little as \$5 and \$25 to be placed for collection.

Applicant has a credible case for mitigation under 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,” and, to a lesser extent, AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Payments after collection do not carry as much weight in mitigation as had Applicant maintained contact with her creditors and attempted to obtain a hardship deferment of her student loans or tried to negotiate partial payments of her other debts. Even so, she has shown good faith in making her student loan payments on time since 2013, when she was contacted by her current loan servicer. She satisfied two of her delinquent credit card accounts before the debts became an issue for her security clearance eligibility.

The Government raised some legitimate concerns about Applicant’s delay in addressing the credit card debts in SOR ¶¶ 1.a and 1.b and the many medical collection debts on her record. The burden of proving the applicability of any mitigating condition is on the Applicant, and she did not begin repaying these debts until after her hearing. However, Applicant did not completely disregard her debt obligations. She sent inquiry letters to her creditors after her OPM interview in September 2014, and she received no response. She apparently followed up after the SOR was issued with no success. She did not understand that she could make telephone inquiries to learn which collection entities were holding her past-due accounts. After her hearing, she acted immediately and reached out to her creditors. She arranged settlements for her two credit card debts and for \$440 of her medical debt. She made the first payments required under those agreements. Her first medical payment of \$110 satisfied the debts in SOR ¶¶ 1.r, 1.u, 1.w, and 1.gg.

As of the close of the evidentiary record, Applicant still owed \$653 to fully settle the debt in SOR ¶ 1.a, \$647 to satisfy the debt in SOR ¶ 1.b, and approximately \$1,246 in medical collection debt. In evaluating Guideline F cases, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessary includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrated that [she] has established a plan to resolve [her] financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant’s financial situation and evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that the plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant’s record of student loan repayment augurs favorably for whether she can reasonably be expected to continue to make the monthly payments

promised to her other creditors and eventually resolve her debts. With the slight increase in her salary for 2016, she had about \$500 in discretionary income each month, so she should be able to afford the \$268 per month she has committed to pay.

Applicant's financial situation is improving. She has four open credit card accounts with balances not exceeding \$1,000 on each. While she will be repaying her 401(k) loan for another four years, her monthly repayment at \$200 a month is less than what she had been paying for her car. Perhaps more importantly going forward, Applicant understands that she made a mistake in allowing debts to go to collections. She makes sure that her bills are paid on time. She has made sufficient progress to resolve the financial issues of security concern in her favor.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).³ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant understandably gave priority to providing necessities for herself and her son. At the same time, delinquent debts raise concerns about an individual's judgment and reliability with regard to being able to protect classified information. The Government must be able to fully rely on Applicant's judgment. As a FSO, she has to ensure unwavering compliance with the rules and regulations regarding the handling and safeguarding of classified information by all cleared employees at her facility.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Yet a determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. Applicant is not seen as likely to jeopardize the security clearance she needs for her employment, which provides her an adequate income to support herself and her son. Her present debt burden is manageable. For the reasons noted above, I conclude that it is clearly consistent with the national interest to continue her security clearance eligibility.

³ The factors under AG ¶ 2(a) are as follows:

- (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.

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.gg: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge