



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02497

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

12/02/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding her financial considerations. Eligibility to access classified information is granted.

Statement of Case

On December 30, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865 (E.O. 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 (AGs) implemented by DOD on September 1, 2006.

Applicant responded to the SOR on January 21, 2016, and requested a hearing. The case was assigned to me on June 17, 2016, and scheduled for hearing on July 15,

2016. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (herself) and 13 exhibits (AEs A-M). The transcript (Tr.) was received on August 10, 2016.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with her employee of the year award and explanations regarding the status of the allegations covered by subparagraphs 1.d and 1.k of the SOR. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with a telephone transcript of her conversations with creditor 1.d representatives about her delinquent debt. Applicant's transcript submission was admitted without objection as AE N.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) filed for Chapter 13 relief in August 2012, which she caused to be voluntarily dismissed in September 2013 and (b) accumulated 11 delinquent debts exceeding \$60,000. Allegedly, each of the debts remain delinquent.

In her response to the SOR, Applicant admitted her Chapter 13 bankruptcy dismissal, but denied the remaining allegations contained in subparagraphs 1.b-1.i. She claimed the debts denied have either been paid, settled, disputed, or are covered by payment arrangements with the individual creditors. She claimed the home given to her by her parents was ultimately returned to the lender through an assignment in lieu of foreclosure. Applicant claimed that she could not keep up with her debts with her modest income and cover both the maintenance and repairs required for the home and her living expenses. She claimed that she could not meet her Chapter 13 payment obligations after 12 months of sustained payments and voluntarily dismissed her petition. And she claimed she has since contacted her creditors and made payment arrangements with most of them, which are not reflected in her credit report.

Findings of Fact

Applicant is a 33-year-old cost analyst of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted are incorporated herein. Additional findings will follow.

Background

Applicant married in January 2007 and divorced in June 2011. (GE 1) After a lengthy relationship with a gentleman who moved in with her in 2011, she married him sometime in 2015. (GE 1; Tr. 58) She has no children from either of her marriages. (GE 1)

Applicant earned a bachelor's degree in May 2005 and a master's degree in June 2006 from distinguished universities. She continued her graduate studies from September 2009 through September 2016 from a recognized university but did not earn a degree or diploma. (GE 1) Applicant claimed no military service.

Applicant's finances

In 2006, Applicant's parents owned many real estate and construction companies, and had become very successful with their businesses. All three of Applicant's brothers worked for her parents. As a reward, Applicant's parents in 2006 gave them each a vacation home, paid for by her parents' company. Her parents also gave Applicant a home of her own the same year. (Tr. 51) Applicant and her brothers were each given \$25,000 to furnish the homes. Applicant placed her costs of maintaining her home on her personal credit cards and forwarded the receipts to the company for reimbursement.

In 2008, the real estate market crashed, and her parents' businesses suffered considerably. (Tr. 52) Of the \$25,000 she spent on her credit cards, only \$10,000 was reimbursed by her parents' company, leaving her with a \$15,000 shortfall and unpaid mortgage costs. (Tr. 52) Unable to maintain the home from a different state of residence, Applicant tried to sell it without success in a depressed real estate market. (Tr. 51) Compounding her marketing problems, significant sections of the home were destroyed by a flood. An insurance check covering the repairs was made out jointly to Applicant and the mortgage company. Because Applicant was behind with her mortgage payments, the lender refused to sign over the check to her. (Tr. 53-54) Unable to repair the home with her available funds or sell the home in its condition, Applicant signed over the property to the bank with a deed in lieu of foreclosure in accordance with her agreed arrangements with the lender. (53-54)

Following her assignment of her property deed to her lender, Applicant found a \$40,000 deficiency balance with the lender was reported to her credit reporting agencies. (Tr. 54) After unsuccessful discussions with her lender over removal of the reported balance, Applicant disputed the debt. (Tr. 54-55) She confirmed that the reported debt was later removed from her credit report. (Tr. 54-55)

With little money from her work and mounting debts accrued while she was trying to fund the needed repairs to her home, Applicant found herself in a financial bind and able to make only minimum payments to her creditors. (Tr. 56) In early 2012, she contacted a bankruptcy attorney who recommended she petition for Chapter 7 bankruptcy relief. Because she was making too much money to qualify for Chapter 7 protection, she settled on filing for Chapter 13 relief, which she did in August 2012. (GEs 3-4; Tr. 39, 44-45) In her Chapter 13 petition, she scheduled \$41,393 in secured claims covering two vehicle purchases: one for \$26,349 and another for \$15,044. (GE 3) She scheduled \$57,827 in unsecured non-priority claims, comprised of student loan, consumer, and medical debts, including the debts listed in the SOR. (GE 3)

Applicant filed an amended Chapter 13 petition in January 2013. (GE 4) In her amended Schedule F, she adjusted her schedule F to cover \$59,679 in non-priority, unsecured debt. (GE 4) She adjusted her current monthly income upwards from \$5,687 in 2012 to \$8,205 in January 2013, while reducing her monthly expenses from \$4,687 in August 2012 to \$4,479 in January 2013. (GEs 3-4)

Between August 2012 and September 2013 she made monthly payments of \$1,400 to the bankruptcy trustee that totaled over \$12,607 and were disbursed to her scheduled creditors. (GEs 4 and 6 and AE L; Tr. 47-48) When she realized she could not keep up with the court-approved monthly payments to the trustee, she procured a voluntary dismissal of her Chapter 13 petition in September 2013. (GE 5) Applicant's Chapter 13 schedules reflect monetary shortfalls due to the 26 payments she made to the bankruptcy trustee over the 13-month course she complied with the plan's terms. (AE L)

For some time after her dismissal of her Chapter 13 bankruptcy petition, Applicant made minimum payments to her creditors with the limited funds available to her. She pursued credit counseling following her bankruptcy dismissal, but ultimately decided to address her debts individually. (Tr. 81)

Applicant has since paid a number of the listed debts. She documented payoffs of the following debts in 2016: creditor 1.b (\$5,058), creditor 1.c (\$17,587), a duplicate of the debt (\$14,886) held by creditor 1.k, for the reduced amount of \$5,536, and creditor 1.j (\$255) (AEs A-B and F; Tr. 33-35, 62-64)

With some of her larger creditors, Applicant established payment plans. Under her 12-month payment plan with creditor 1.e on an agreed balance of \$3,835 at the monthly rate of \$25. (AE C) She has a payment plan in effect, too, with creditor 1.g (\$532), in which she pays monthly installments of \$25 for 12 months. (AE E) She also documented a payment plan with creditor 1.h (\$8,927), a duplicate account of creditor 1.i (\$6,375), in which she makes monthly payments of \$101, and has reduced the balance on this debt to \$5,463. (AE E) While she previously disputed the listed creditor 1.d debt (\$649), once it was transferred to a collection agent who had no record of the debt, she has since made contact with the original creditor and telephonically agreed to make monthly payments on the account. (AE N)

Debts not resolved by Applicant are comprised of a creditor 1.d debt (\$649), a creditor 1.f debt (\$1,619), and a creditor 1.i debt (\$7,571). Applicant made contact with creditors 1.f and 1.i but could not obtain any helpful information from these two creditors to address the debts they are holding. (Tr. 65-67) These accounts have been removed from her credit report since 2014. (AE M; Tr. 66) Conversely, she was able to make contact with creditor 1.d who is agreeable to setting up a monthly payment plan with Applicant to pay off the debt in seven months. (AE N). Plan details are to be worked out with the creditor. (AE N)

Applicant established a financial budget in June 2016 that she checks daily and is careful with her money after learning important lessons about managing her money. (AE

G; Tr. 85) She retains a remainder every month that varies among the 16 paychecks she earns annually. (AE G) Applicant currently nets \$5,427 a month and is current with all of her federal taxes owed to date. (Tr. 74-75) Her husband earns \$118,000 annually and keeps his debts separate from hers. (Tr. 78) Applicant has a 401(k) retirement account with \$8,000 in the account after taxes and withdrawals. (Tr. 79) She is current with her non-SOR debts. (AEs H-I) She consolidated the loans on the two cars she owned, and the consolidated loan is in current status. (AE M; Tr. 48-50). Should her husband lose his job, she is confident of her ability to cover her mortgage, which currently carries a monthly mortgage obligation of \$1,860 on a \$280,000 mortgage balance. (Tr. 86-87)

Character References

Applicant is well-regarded by her direct supervisor who characterizes Applicant as a “great asset” to her company team. (AE K) He credited her with superb knowledge and ability to explain materials to all levels of understanding. (AE K) A colleague familiar with her work extolled her breadth of experience and depth of knowledge and credited her with being a responsible, concerned, and passionate citizen, and a very serious, detail-oriented team member who is consistently compliant with information security. (AE K) Applicant has received numerous awards from her current employer. (AE J) They include an educator of the year award in 2015. (AE L)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include “[c]onditions that could raise a security concern and may be disqualifying” (disqualifying conditions), if any, and any of the “[c]onditions that could mitigate security concerns.” These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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 chances; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of

establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of E. O. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant’s history of accruing delinquent accounts between 2008 and 2012. Her debts consist primarily of delinquent consumer and utility debts associated with her persistent efforts to keep up with her mortgage while she tried to sell her home in a depressed real estate market. Her history of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also implicit in financial cases.

Applicant attributed her delinquent debts to poor real estate market conditions that forced her to choose between staying current with her mortgage and keeping up with her other bills. Her problems merit application of MC ¶ 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.” Her financial affairs have improved considerably in the past two years with her income increases from her current employment, which have enabled her to fully address her listed debts.

Over the course of the last two years, Applicant has reached out to her listed creditors and addressed her debts with both pay-offs and payment plans. Her efforts reflect responsible payment efforts under all of the circumstances considered and enable her to apply the full benefits of MC ¶ 20(b). Her repayment efforts also enable her to invoke MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” to the facts of her case. Prospects for her fulfilling the payment conditions of her payment agreements with creditors 1.e, 1.g, and 1.h are good.

Based on the evidence presented, Applicant is able to demonstrate the level of financial progress required to meet the criteria established by the Appeal Board for

assessing an applicant's efforts to rectify her poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's considerable efforts taken to pay or otherwise resolve her listed debts with the resources available to her enable her to meet the Appeal Board's requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant provided strong character references from her direct supervisor and work colleague familiar with her work to reinforce the responsible efforts she has mounted repair her finances. Her employment credits include an educator of the year award in 2015. (AE L) Applicant's documented payment efforts are substantial and enable her to demonstrate the level of trustworthiness, reliability, and good judgment required to meet minimum security clearance eligibility criteria.

Considering all of the circumstances surrounding Applicant's delinquent debt accruals and her substantial repayment efforts, her actions to date in addressing her finances are sufficient to meet mitigation requirements imposed by the guideline governing her finances. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.I of Guideline F.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas. 1.a-1.I:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

