



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



In the matter of:)
)
) ISCR Case No. 15-04221
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2017

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s financial problems were caused by a job layoff and a corresponding period of homelessness several years ago. Since her employment and living situation have stabilized, she has gradually been satisfying her delinquent debts. Applicant has mitigated the security concern. Clearance is granted.

Statement of the Case

On December 8, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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.

On January 14, 2016, Applicant answered the SOR, admitting the allegations and requesting a hearing before an administrative judge from the Department of Defense Office of Hearings and Appeals (DOHA), and the case was assigned to me on August 11, 2016. DOHA issued a notice of hearing on September 14, 2016, scheduling the hearing for October 26, 2016. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1 - GE 4), and nine Applicant exhibits (AE A - AE I). Also, I considered the testimony of Applicant and three character witnesses. At the close of the hearing, I held the record open at Applicant's request, without objection, to allow her to submit additional exhibits. Within the time allotted, she submitted seven additional exhibits that I incorporated into the record as AE J through AE P. DOHA received the transcript (Tr.) on November 2, 2016.

Findings of Fact

Applicant is a 44-year-old single woman with an adult child. A marriage, lasting from 1992 to 1998, ended in divorce. In 1990, Applicant declined an admission to an Ivy League school, choosing instead, to enlist in the U.S. Marine Corps. (AE C) She served in the Marines through 1998 when she was honorably discharged. After leaving the Marines, she pursued a higher education, earning an undergraduate degree in 2003, a master's of business administration in 2006, and working towards a Ph.D between 2006 and 2008. (GE 1 at 11; Tr. 26)

Applicant is an accountant. Since December 2009, she has been working for a defense contractor on its audit readiness team.(GE 1 at 12) She has held a security clearance during her entire stint with this employer. (GE 1 at 40) Applicant worked for her previous employer between October 2007 and August 2008. (GE 1 at 14) She was laid off after testifying against her supervisor in an embezzlement case. (GE 1 at 14; Tr. 32) For the next 16 months, Applicant was either underemployed or unemployed.

A single mother who was raising her then teenage daughter, Applicant struggled to make ends meet.¹ Applicant spent much of this employment hiatus either homeless or in transition, moving from one friend's residence to another. Correspondingly, Applicant struggled to pay her bills.

By 2013, Applicant had incurred approximately \$160,000 of delinquent debt, as alleged in the SOR. Nearly all of the debts constitute delinquent student loans that she incurred to help pay for her Ph.D studies (subparagraphs 1.a - 1.g), totalling \$31,000 as of the date of the SOR, or to pay for Applicant's graduate education (subparagraphs 1.h - 1.aa), totalling \$122,000, as of the SOR date.

Applicant's student loans were deferred while she was unemployed. (Answer at 1) After Applicant gained full-time employment in 2009, she successfully applied for a

¹Applicant's employment downturn also corresponded with the period that she stopped pursuing her Ph.D. (GE 1 at 11)

temporary hardship forbearance for the loans alleged in subparagraphs 1.h through 1.aa. This enabled her to focus on her unsettled housing situation. By February 2011, Applicant had secured a stable residence, and began focusing on her debt repayment. Applicant “hit a roadblock” when the student loans for her daughter became due in 2013. (Answer at 1; AE 4 at 4) They are not alleged in the SOR and total approximately \$16,600. (Tr. 25) Applicant satisfied them in May 2015. (Tr. 25; AE G at 2)

In 2013, Applicant completed a comprehensive financial counseling course through her church. The course met two hours each week for 13 weeks. (AE A) Per the counselor, Applicant eagerly participated, coming to each session with her budget, adhering to her plan, and making steady progress. (AE A) She was equally committed to generating extra income, as she obtained a part-time job as a *Zumba* instructor, and she organized a rummage sale for her and her classmates. Using the proceeds from the sale, Applicant and her classmates collectively reduced their debts.

By September 2016, Applicant had satisfied the two miscellaneous delinquencies alleged in the SOR (subparagraphs 1.bb and 1.cc), totaling approximately \$6,000, in their entirety. (AEs E - F, M) As for the consolidated student loans set forth in subparagraphs 1.a through 1.g, Applicant paid them approximately \$680 per month through a wage garnishment from August 2013 to October 2016. (AE L at 5-6) As of October 2016, Applicant was in the process of removing the wage garnishment so that she “can make payments on her own.” (Tr. 29) Using the federal loan rehabilitation program, Applicant’s payments will be reduced to \$11 monthly from November 2016 to July 2017. (AE I at 7) Once she completes these payments, a new lender will purchase the loan and establish a new payment based on the remaining balance. (AE I at 1) Since the SOR date, Applicant has reduced the balance from approximately \$31,000 to \$25,000. (AE I at 1)

Applicant’s delinquent student loans alleged in subparagraphs 1.h through 1.gg remain in forbearance. (Tr. 27) Payments were scheduled to have resumed in January 2017. (AE G)

Applicant earns \$78,500 per year. (Tr. 17) Recently, she began saving approximately \$600 per month of discretionary income. (Tr. 32) She has accrued \$1,000 in savings. (Tr. 32)

According to a co-worker who has become a friend of Applicant over the years, she is a hard worker who at times works “countless overtime hours,” and has “take[n] on multiple jobs as a means to helping her get caught up on payments due,” in the past.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s delinquent debt triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

Applicant’s financial problems were not the result of foolish or irresponsible overspending. Instead, they occurred after a layoff and a lengthy period of unemployment and underemployment. Applicant’s financial distress was severe, as she was homeless for much of the time that she was unemployed. Since gaining full-time work in 2009, her living situation has stabilized, and with the help of a counselor, she

has been addressing her debts. Currently, she has satisfied her daughter's student loans, unalleged in the SOR, totaling \$16,600, together with subparagraphs 1.cc and 1.dd, totalling approximately \$6,000. The remaining SOR debts are student loans. Applicant has been steadily making payments for the student loans alleged in subparagraph 1.a through 1.g, and the debts alleged in subparagraphs 1.h through 1.aa are in forbearance. Applicant maintains a budget, and judging by the amount that she is depositing into a savings account each month, appears to be managing her money responsibly. All of the mitigating conditions, as referenced earlier in the decision, apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They 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.

Considering the circumstances surrounding Applicant's financial problems, and the significant presence of rehabilitation, I conclude she has mitigated the security concerns. In reaching this conclusion, I was particularly impressed with the reference from Applicant's financial counselor.

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.cc:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge