



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-05353
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: Thomas Albin, Esq.

12/06/2016

Decision

HOGAN, Erin C., Administrative Judge:

On February 5, 2016, 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 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) effective within the Department of Defense after September 1, 2006.

On February 24, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 25, 2016. The case was assigned to me on June 8, 2016. On August 1, 2016, a Notice of Hearing was issued, scheduling the hearing for August 22, 2016. The hearing was rescheduled as a result of a travel delay and held August 23, 2016. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered three exhibits which were admitted as Applicant Exhibits (AE) A – C. The transcript (Tr.) was received on August 31, 2016. The record was held open until September 7, 2016, to allow Applicant to submit additional documents. Applicant submitted a 45-page document on November 29, 2016, which

was admitted as AE D. The documents were submitted late because of administrative oversight. On November 30, 2016, Applicant submitted a three-page document admitted as AE E. Department Counsel had no objection to AE D and E. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her response to the SOR, Applicant admits SOR ¶¶ 1.b and 1.e, and denies SOR ¶¶ 1.a, 1.c, and 1.d.

Applicant is a 38-year-old employee of a Department of Defense contractor seeking to maintain a security clearance. She has worked for her current employer since July 2003. Applicant has held a security clearance for 13 years with no security incidents or violations. She is a high school graduate and has some college credits. She is married and supports three children, a 19-year-old son, a 15-year-old daughter, and a 13-year-old step-daughter. (Tr. at 23-27, 62; Gov 1)

Applicant's background investigation revealed that she has a history of financial problems. The SOR alleges the following debts: a \$17,892 balance on a car that was voluntarily repossessed. (SOR ¶ 1.a: Gov 1 at 34; Gov at 8; Gov 4 at 7; Gov 5 at 4); a \$13,883 charged-off time share account (SOR ¶ 1.b: Gov 5 at 4; Gov 6 at 6); a \$924 account placed for collection (SOR ¶ 1.c: Gov 5 at 4; Gov 6 at 6-7); and a \$64 medical account placed for collection. (SOR ¶ 1.d: Gov 5 at 12; Gov 6 at 7).

SOR ¶ 1.e alleged that Applicant filed for Chapter 13 bankruptcy in September 1996. It was dismissed in 1997. The Government did not present evidence of the Chapter 13 bankruptcy, but Applicant admitted the Chapter 13 bankruptcy in her response to the SOR. During the hearing, Applicant testified that she decided to stop the bankruptcy proceedings and pay her bills instead. She was 19 at the time she filed bankruptcy. She was young, naïve, and had given birth to her son. After speaking with her parents and attorney, she decided to withdraw the bankruptcy. She resolved the bills on her own. I find SOR ¶ 1.e for Applicant.

From age 6 to 13, Applicant's daughter suffered from a serious medical condition. Her daughter's health issues caused a lot of emotional and financial stress. Applicant was a single parent who received no child support. At times, she felt her job was at risk and she had to take unpaid time off from May 2008 to September 2009, to care for her daughter. Her daughter is now 15 and in good health. Her son also had a medical operation when he was 15. However, his operation was covered by insurance and Applicant did not have to take extensive time off from work. Applicant is now attempting to recover from her financial problems. (Tr. 23-25, 28-29; Gov 6 at 2)

Applicant divorced in 2003 and remarried in 2013. Her husband was unemployed when they married, but has been fully employed since April 2014. Her husband's annual income is approximately \$30,000. Applicant's annual income is approximately \$60,000

to \$70,000 a year depending on overtime. After expenses they have between \$200 to \$1,000 left over each month depending on overtime. They are current on all taxes. (Tr. 29-30, 34-36, 48-49, 60-61)

The current status of the debts alleged in the SOR is:

SOR ¶ 1.a: a \$17,892 balance on a car that was repossessed: Applicant was on unpaid leave while caring for her daughter. She could not afford the payments, so she voluntarily surrendered the car. She tried to negotiate for reduced payments several times before surrendering the car. The car was sold at auction leaving a remaining balance of \$13,950. A judgment was entered against Applicant in June 2013. Applicant agreed to pay \$50 monthly towards this judgment. She provided a copy of the judgment at the hearing. Applicant testified that she has been making the payments since the date of the judgment. After the hearing, she provided documentation verifying this assertion. (Tr. 17-22, 58-59; AE A; AE B; AE D; AE E)

SOR ¶ 1.b: a \$13,883 charged-off time share account: Applicant purchased this time share in 2010, but could not afford the payments because of the expenses incurred as a result of her daughter's medical condition. The time share company changed the fee structure. Applicant attempted to settle the debt, but was unsuccessful. She recently contacted the timeshare company. They sent her an e-mail indicating that they reached a settlement for the amount owed and that no additional amounts will be required from Applicant. (Tr. 31-34, 37; AE C)

SOR ¶ 1.c: a \$924 account placed for collection: Around 2006, Applicant's car was stolen and set on fire. The car was a total loss. The insurance company did not pay the entire amount of the loss. Applicant claims she had gap insurance that should cover the remaining amount. She contacted the company and the company indicated there were no accounts under her maiden name, her married name, or under her social security number. They were going to send a letter that they had no record of this account. Applicant did not submit a letter after the hearing. The debt is not listed on Applicant's most recent credit reports. (Tr. 37-43; Gov 3; Gov 4)

SOR ¶ 1.d: a \$64 medical account placed for collection: Applicant disputes this account. She states that she has paid all of the medical accounts. She believes this was her son's medical bill which she paid in 2013 or 2014. The credit report provides no information as to who to contact to resolve this account. If there was a way to verify the account she would pay the debt. The medical account is not listed on Applicant's most recent credit reports. I find for Applicant regarding this allegation because the SOR allegation was insufficient. (Tr. 43-45; Gov 3; Gov 4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which must be considered when determining 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 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." 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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 concern relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply. Applicant has had financial problems over the past several years to include a vehicle repossession and a charged-off time share account. She has been unable to satisfy these debts over the past several years.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet their financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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) applies. Most of

Applicant's debts were the result of her inability to pay the debts because of her daughter's serious chronic illness. Applicant has been attempting to resolve her financial debts. She does not live above her means. Her financial situation is now stable and Applicant's past financial problems do not cast doubt on her current reliability, trustworthiness, or good judgment.

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. Applicant had to take unpaid leave from May 2008 to September 2009 to care for her daughter. She was unable to pay most of her debts. She voluntarily returned her car because she was unable to make payments. She attempted to negotiate the terms of her automobile loan before voluntarily surrendering the car to the dealer. Once the debt went to judgment, she agreed to pay \$50 a month towards the debt and has been timely paying towards the judgment. Applicant's decision to purchase a timeshare in 2010 was not the best judgment. However, she does not live above her means. She acted responsibly under the circumstances.

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) applies because Applicant is making payments towards the debt alleged in SOR ¶ 1(a). She contacted the timeshare company and they agreed to settle the debt. The two remaining debts are no longer on Applicant's credit reports. Applicant's financial situation is under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant agreed to pay \$50 a month to a law firm collecting for the debt alleged in SOR ¶ 1.a. she has paying on this debt since 2013. She settled the debt with the timeshare alleged in SOR ¶ 1.b. Although she has not formally disputed the debts alleged in SOR ¶¶ 1.c and 1.d, Applicant provided sufficient reasons for her dispute. Neither debt is listed on her most recent credit reports.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 considered Applicant's 13-year history with her current employer. I considered the challenges Applicant has faced over the past several years, both medical and financial. Her decision to file for Chapter 13 in 1996 when she was 19, was reasonable. She decided to forgo the process and resolved the debts on her own. I considered her daughter's chronic illness and the fact that Applicant had to take unpaid leave for sixteen months to care for her daughter. This occurred when Applicant was a single mother and received no child support. While Applicant's decision to purchase a timeshare in 2010, did not demonstrate the best judgment, the timeshare settled with Applicant and states she owes no additional money. Applicant disputes two additional delinquent debts. Both had small balances and no longer appear on her most recent credit reports. Her financial situation is stable. Security concerns under financial considerations are mitigated.

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.e:	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.

ERIN C. HOGAN
Administrative Judge