



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



In the matter of:

ISCR Case No. 15-05361

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

March 16, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 32-year-old employee of a defense contractor. She has a history of financial indebtedness demonstrated by her numerous delinquencies. However, in 2013, she enrolled in a credit counseling service and slowly began repaying her debts through that service. She has resolved 11 of her 14 debts listed on the Statement of Reasons (SOR), and intends to continue to make payments until the remaining three accounts are fully resolved. Given her good-faith efforts over the past four years to resolve her debts, she can be trusted to continue her efforts to resolve the remaining three accounts. Eligibility for access to classified information is granted.

Statement of the Case

On August 11, 2016, the Department of Defense issued an SOR to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on August 30, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on November 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 2, 2016, scheduling the hearing for November 28, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified on her own behalf. The record was left open for receipt of additional documents. On December 22, 2016, Applicant presented AE G through AE I. On March 6, 2017, she presented AE J. Department Counsel had no objections to AE G through AE J and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on December 6, 2016.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. She has worked for her employer since 2004. She has one minor child and is pregnant with her second child. (GE 1; Tr. 16.)

As listed in the SOR, Applicant was alleged to be delinquent on 14 debts in the total amount of \$24,591. Her debts are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4.)

Applicant attributed her financial delinquencies to irresponsible spending. (Tr. 29.) She had extended her credit to the point where she could only afford to make the minimum payments on her debts. She reached out to a credit counseling service in 2013 to help her begin to resolve her delinquencies. She has been working with that company, and its successor, since that time. She pays the credit counseling service \$500 per month. They negotiate with her creditors and resolve each debt, one at a time. They helped Applicant create a budget. She intends to continue to resolve her remaining accounts through the credit counseling service. (Tr. 33-40.)

Applicant was indebted on a charged-off credit card account in the approximate amount of \$8,500, as alleged in SOR ¶ 1.a. Applicant presented a receipt dated August 12, 2014, which shows she resolved this debt in full. It is resolved. (AE F; Tr. 19-22.)

Applicant was indebted on a charged-off account in the approximate amount of \$2,023, as alleged in SOR ¶ 1.b. She paid this debt through the credit counseling agency she hired to help her manage her debt. It is resolved. (AE D; Tr. 22-28.)

Applicant is indebted on a charged-off account in the approximate amount of \$5,476, as alleged in SOR ¶ 1.c. The credit counseling agency she hired is attempting to negotiate a settlement on this account. It is “in-progress” according to the credit-counseling agency’s account status. This debt is being resolved. (AE B; AE D; Tr. 28.)

Applicant was indebted on a collection account in the approximate amount of \$1,229, as alleged in SOR ¶ 1.d. Applicant testified this was the same debt as that

alleged in SOR ¶ 1.m. She paid this debt through the credit counseling agency she hired to help her manage her debt. It is resolved. (AE D; Tr. 29.)

Applicant was indebted on a collection account in the approximate amount of \$140, as alleged in SOR ¶ 1.e. Applicant presented a letter dated December 2, 2016, from the collection agent reflecting that this obligation has been paid in full. It is resolved. (AE I; Tr. 29-31.)

Applicant is indebted on a charged-off account in the approximate amount of \$1,632, as alleged in SOR ¶ 1.f. The credit counseling agency she hired is actively attempting to negotiate a settlement on this account. This debt is being resolved. (AE B; AE D; Tr. 17, 33.)

Applicant was indebted on a collection account in the approximate amount of \$1,076, as alleged in SOR ¶ 1.g. Applicant presented a letter dated December 2, 2016, from the collection agent reflecting that this obligation has been paid in full. It is resolved. (AE I; Tr. 31.)

Applicant was indebted on a collection account in the approximate amount of \$475, as alleged in SOR ¶ 1.h. Applicant reflected that this debt was settled with the collection agent through her credit counseling service for \$316. It was resolved May 24, 2013. Her credit report reflects a zero balance. This debt is resolved. (GE 4; AE B; Tr. 17.)

Applicant was indebted on a collection account in the approximate amount of \$168, as alleged in SOR ¶ 1.i. Applicant reflected that this debt was settled with a collection agent through her credit counseling service for \$85.02. It was resolved on June 1, 2013. (AE B; Tr. 17.)

Applicant is indebted on a collection account in the approximate amount of \$811, as alleged in SOR ¶ 1.j. Applicant credibly testified that this debt would be added to her debt management plan, as she had previously inadvertently overlooked it. (GE 3; Tr. 17, 33.)

Applicant was indebted on a collection account in the approximate amount of \$164, as alleged in SOR ¶ 1.k. Applicant presented a letter dated August 31, 2016, which reflects this debt was “paid or settled in full.” It is resolved. (AE A; Tr. 17.)

Applicant was indebted on a collection account in the approximate amount of \$218, as alleged in SOR ¶ 1.l. She presented a statement from the collection agent on this account that shows this debt was paid in full. It is resolved. (AE C; AE J; Tr. 17.)

Applicant was indebted on a collection account in the approximate amount of \$615, as alleged in SOR ¶ 1.m. Applicant testified this was the same debt as that alleged in SOR ¶ 1.d. Record credit reports are consistent with this explanation. It is resolved as discussed above. (AE D; Tr. 17, 29.)

Applicant was indebted on a charged-off account in the approximate amount of \$2,064, as alleged in SOR ¶ 1.n. Applicant presented a letter from this creditor dated December 2, 2016, which reflects that this debt has been satisfied. It is resolved. (AE H; Tr. 17.)

Applicant reports to her facility's security manager, who wrote a letter of support on Applicant's behalf. The security manager indicated that Applicant is trustworthy and devoted to her job and family. She is "a highly responsible and dedicated individual." (AE G.)

Applicant testified that she is able to meet her regular living expenses, make the agreed payments on her debt management plan, and still has \$300 left at the end of the month. (Tr. 36.) She indicated she has matured and plans to resolve all of her delinquent debt. (Tr. 16-17, 34-36.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial indebtedness demonstrated by her 14 SOR-listed accounts, which became delinquent due to her irresponsible overspending. The evidence raises both of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. The following provide mitigation:

- (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;

(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 incurred the 14 delinquent accounts when she was young and immature. She now realizes the importance of good credit and has been working with a credit counseling service to repay her delinquencies. Since 2013, she has resolved 11 of her 14 delinquencies. She has three that she is still working to resolve. Applicant's financial problems occurred under circumstances that are unlikely to recur, and do not cast doubt on her current reliability, trustworthiness, or good judgment. Further, through the credit counseling service, she has created a budget that she is able to maintain. There are clear indications that Applicant's financial problems are being resolved. While not every debt is fully resolved, Applicant has demonstrated a track record of consistent payments through the credit counseling service and credibly testified that she intends to resolve her remaining delinquencies. Applicant has mitigated the Government's concerns.

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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is respected by her supervisor and performs well at work. She has worked hard to resolve her delinquencies over the past four years, and most of this progress occurred before issuance of the SOR in August 2016. She has demonstrated reasonable and

responsible actions with respect to her debt. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Financial Considerations security concerns. I conclude the whole-person concept for Applicant.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	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.

Jennifer I. Goldstein
Administrative Judge