



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



In the matter of:)
)
) ISCR Case No. 15-05815
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 16, 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 (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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 20, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 10, 2016, scheduling the hearing for September 21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibit (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted a document that I have marked AE H and admitted without objection. DOHA received the hearing transcript (Tr.) on September 30, 2016.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. She has worked for her current employer since February 2015. She has an associate's degree and additional college courses, but she has not earned a bachelor's degree. She married in 2002 and divorced in 2006. She has a 14-year-old child.¹

Applicant had recurring periods of unemployment and underemployment before she obtained her current job. She also engaged in a costly custody battle over her child, which she eventually won. She lost a job when she moved to get away from her ex-husband's girlfriend. Applicant stated that the girlfriend made false allegations against her and persuaded four people to provide perjured testimony against her, which forced Applicant to accept a plea deal for a deferred adjudication. She cared for her father after he was critically injured in an assault. Her mother and brother lived with her for a period. Applicant took in her sister's four children after they were removed from the home by child protective services. The children lived with Applicant for about a year. She was terminated from a job because of all the time she had to take off from work to care for the children.²

The SOR alleges 22 delinquent debts totaling about \$35,000. The debts include a student loan (SOR ¶ 1.a - \$7,891); a deficiency balance on a car loan after repossession (SOR ¶ 1.d - \$12,977); a public utility (SOR ¶ 1.b - \$923); telecommunication companies (SOR ¶¶ 1.g-1.k, 1.n - totaling \$2,710³); a parking ticket (SOR ¶ 1.q - \$100); ten medical debts totaling \$8,292 (SOR ¶¶ 1.e, 1.f, 1.l, 1.m, 1.o, 1.s-1.w); and four miscellaneous debts totaling \$1,233 (SOR ¶¶ 1.c, 1.p, 1.r, 1.x). All of the debts are listed on at least one credit report.

Applicant admitted that at one time she owed the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, and 1.v. She denied knowledge of the remaining debts. She stated that her mother and brother had access to her Social Security number and may have stolen her identity. In July 2016, she contracted with a law firm to remove items that do not comply with "various laws governing fair, accurate and substantiated consumer credit reporting" from her credit report. She also received financial counseling.⁴

¹ Tr. at 18, 55, 63-64; GE 1, 2.

² Tr. at 18-25, 51; GE 1, 2.

³ SOR ¶¶ 1.j (\$496) and 1.k (\$495) appear to be duplicates. I did not include SOR ¶ 1.k in the \$2,710 total.

⁴ Tr. at 42, 47-48, 51-52, 58-60; GE 2; AE E.

Applicant stated that the \$7,891 defaulted student loan alleged in SOR ¶ 1.a was paid through seizure of her federal income tax refunds for what she believed was the last three years, which would have been tax years 2013, 2014, and 2015. She provided no documentation to support that statement. When confronted with this debt during her background investigation in March 2015, she stated that she could not recall the loan. The debt is listed with a balance of \$7,891 by all three credit reporting agencies on the March 2015 combined credit report. Equifax and Experian reported the debt as opened in September 2006; the date of last action as May 2008; and \$5,634 charged off in October 2009. TransUnion reported the debt as opened in September 2006; the date of last action as June 2010; and \$7,891 charged off on an unspecified date. The debt is not listed on the March 2016 and September 2016 Equifax credit reports.⁵

Applicant admitted the \$184 delinquent debt to a department store as alleged in SOR ¶ 1.c. She has not paid the debt. The debt is listed by TransUnion on the March 2015 combined credit report. Applicant stated the debt was removed from her credit report. It is difficult to ascertain if TransUnion deleted the debt because the September 2016 TransUnion credit report submitted by Applicant is missing a page.⁶

The \$12,977 delinquent debt alleged in SOR ¶ 1.d is the deficiency balance on a car loan for a luxury car that was repossessed in about 2008. Applicant admitted owing the debt. She has not paid it, but the collections account has been removed from her credit report.⁷

Applicant denied owing the \$923 public utilities debt alleged in SOR ¶ 1.b and the \$804 credit card debt alleged in SOR ¶ 1.x. The debts are listed by at least one of the credit reporting agencies in September 2016.⁸

None of the remaining non-medical debts appear on any of the September 2016 credit reports in evidence. Whether any of them appear on the missing page of the September 2016 TransUnion report is unknown. Applicant stated, without documentation, that she paid the \$7,891 defaulted student loan and that she had payment plans for several of the medical debts. She has not paid any of the other debts alleged in the SOR. She owns two vehicles, and she has two car loans. To reestablish credit, she bought a used 2006 luxury car in April 2012, financed through a loan of about \$13,000, with \$371 monthly payments for 61 months. The car turned out to be unreliable, and she spent thousands in repairs. She was unable to sell the car because she owed more on the loan than the car was worth. She bought a used 2015 sport utility vehicle (SUV) in December 2015, financed through a loan of about \$21,000, with \$493 monthly payments for 60 months.⁹

⁵ Tr. at 39-41; Applicant's response to SOR; GE 2-5; AE F, G.

⁶ Tr. at 17-18, 42, 54; Applicant's response to SOR; GE 3-5; AE F.

⁷ Tr. at 21-22, 28-29, 42-43; Applicant's response to SOR; GE 1-5; AE A, F, G.

⁸ Tr. at 41-42, 50-54; Applicant's response to SOR; GE 2-5; AE F, G.

⁹ Tr. at 27-32, 5-56, 66-67; GE 3-5; AE A, F, G.

Applicant took in her sister and her sister's four children after her sister's house was destroyed in a fire in about June 2016. Applicant's sister wrecked her car in September 2016. Applicant's sister is now using one of Applicant's cars. Applicant moved from an apartment to a house to accommodate her sister's family. Her rent increased from \$1,200 per month to \$1,550 per month. Applicant has a student loan of about \$26,000 that was scheduled to come out of deferment in October 2016. Applicant earns a reasonable salary, and her ex-husband pays child support. She has a budget, but it is not accurate, and it does not account for payments when the student loan comes out of deferment, and it does not include any payments toward her delinquent debts.¹⁰

Applicant's sister wrote that Applicant "is kind and has a huge heart and tries to take care of her entire family when bad times hit and she is there when needed she'll give her shirt off her back and last cent to help others. . . . She is a loving, honest, loyal, trusting sister, daughter, and mother that will make ends meet for her family."¹¹

Policies

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 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 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."

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 security decision.

¹⁰ Tr. at 19, 26-27, 33-37, 57-58; GE 1-5; AE B-D.

¹¹ AE D.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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:

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 conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts and was unable or unwilling to pay her financial obligations. The above disqualifying conditions are applicable.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant had recurring periods of unemployment and underemployment before she obtained his current job. She engaged in a costly custody battle over her child. She lost a job when she moved to get away from her ex-husband's girlfriend. She helped her parents, brother, sister, and her sister's four children. She was terminated from a job because of all the time she had to take off from work to care for the children. Some of those events were beyond Applicant's control. Although Applicant stated that the girlfriend made false allegations against her and persuaded four individuals to provide perjured testimony against her, Applicant accepted a plea deal for a deferred adjudication. Helping her parents, brother, sister, and her sister's children is commendable, but voluntary.

Applicant stated the defaulted student loan in SOR ¶ 1.a was paid through seizure of her federal income tax refunds, but she provided no documentation to support that statement. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)).

Applicant denied owing most of the debts alleged in the SOR. I am crediting her with mitigating all the medical debts and the debts that do not appear on the September 2016 credit reports. Left unresolved, with no plan to resolve them, are the \$7,891 defaulted student loan (SOR ¶ 1.a); the \$923 public utilities debt (SOR ¶ 1.b); the \$184 department store debt (SOR ¶ 1.c); the \$12,977 deficiency balance on the repossessed car loan (SOR ¶ 1.d); and the \$804 credit card debt (SOR ¶ 1.x).

I am unable to find that Applicant acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. His financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. The first part of AG ¶ 20(c) (financial counseling) is applicable; the second part (clear indications that the problem is

being resolved or is under control) is not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(e) is applicable to the disputed debts that do not appear on the September 2016 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 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.

I considered the favorable comments from Applicant's sister and the assistance Applicant provided to her family. I also considered the factors that led to Applicant's financial difficulties and the limited steps she has taken to rectify them. Applicant has not convinced me that she has a viable plan to address her finances.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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:	Against Applicant
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraphs 1.e-1.w:	For Applicant
Subparagraph 1.x:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge