



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



In the matter of:)
)
) ISCR Case No. 15-07368
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

08/17/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 10, 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 (Exec. Or.) 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).¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on August 1, 2016, and requested a hearing before an administrative judge. The case was assigned to me on May 4, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 19, 2017, scheduling the hearing for June 14, 2017. I convened the hearing as scheduled.

The Government's exhibit list, discovery letter, notice of representation and subsequent withdrawal of Applicant's counsel were appended to the record as Hearing Exhibits (HE) 1 through 3. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant's exhibit lists were appended to the record as HEs A and B. Applicant testified and submitted Applicant's Exhibits (AE) A through DD, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until June 28, 2017, for the parties to submit additional documentation. Applicant timely provided documentation, which I marked as AEs EE through LL. The Government's email indicating no objection to Applicant's post-hearing submissions and Applicant's exhibit list were appended to the record as HEs 4 and C, respectively. AEs EE through LL were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on June 23, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a to 1.d, 1.g, and 1.h, and denied SOR ¶¶ 1.e and 1.f. She is 51 years old. She has been married since 1988 and has an adult child that lives with them. She obtained a bachelor's degree in 1987, a master's degree in 2000, and has taken classes towards a doctorate degree since June 2014.²

Applicant has worked for her current company, a defense contractor (company A), since June 2012. She became the owner, president, and CEO of company A in April 2013, returned company A to its founder by May 2017, and has since worked as company A's facility security officer. She served honorably in the U.S. military from 1987 until she retired as a lieutenant colonel in 2007. She worked for a prior defense contractor, initially as a program manager and eventually as the company's president, from 2007 until she obtained her current job. She started her own company (company B) in January 2012, and has since served as its president. She has held a DOD security clearance since 1987.³

The SOR alleges a judgment entered against Applicant by a state in 2015, four delinquent mortgage accounts, and three delinquent consumer accounts. The SOR allegations are established by Applicant's admissions and the credit reports.⁴

² Applicant's SOR response; Tr. at 17-99; GEs 1-2; AE K.

³ Tr. at 17-99; GEs 1-2; AEs A-F, J-K, S, LL.

⁴ SOR; Applicant's SOR response; GEs 3-5; AEs T, DD, FF.

Applicant's financial problems started in June 2012, when she started working for company A as a consultant instead of continuing to build company B that she had started in January 2012. She initially earned a small salary at company A, but seized the opportunity to learn from a seasoned businessman and grow a business that already had past performance and a contract in the process of being renovated. Within a few months, she realized she was not going to get paid but still had to generate income for company A; her income went from \$175,000 annually to zero. She found another consulting opportunity to fill the pay gap, but that company fell on hard times within five months. She found herself in a monthly deficit of \$14,000. She persisted with company A because she was given ownership, and she believed her situation would improve with hard work and dedication. She supported herself through her husband's income, her military retirement, and her disability payments. She also enrolled in a doctorate program through the GI bill, and used the \$2,000 monthly stipend to supplement her household income.⁵

Applicant became 100% owner of company A in April 2013. When company A began to gain traction in 2014, Applicant stated that the founder took notice and asked for an ownership stake. Applicant agreed, but stated that she told the founder he would have to work in company A as a 1099 employee. When Applicant obtained status for company A as a service-disabled veteran-owned business, Applicant stated that she notified the founder that he was no longer a part of it and sent him a cease and desist letter pertaining to company A's affairs. He then filed a lawsuit against her in September 2015, he subsequently dropped his lawsuit, Applicant countersued him for forgery and fraud, and they settled in June 2017. Applicant incurred a significant amount of attorney's fees as a result.⁶

Applicant took less than \$10,000 in owner draws from company A between April 2013 and 2014, as the company was not profitable. She took owner draws of \$43,000 in 2015, \$39,000 in 2016, and \$12,000 in 2017. She has not taken any draws from company A since she transferred it back to its founder by May 2017.⁷

As of the hearing date, Applicant stated that she and the founder of company A were in the process of implementing the settlement agreement and a March 2017 court order. She began the process of transferring the contracts from company A to company B in May 2017, and discussions were ongoing as to how much she would have to pay for the contracts given she was responsible for bringing them to company A. Once all the contracts are transferred to company B, Applicant expects to continue to build company B and completely disassociate herself from company A. Applicant stated that in retrospect, she should have cut her losses when the founder of company A filed a lawsuit against her; she chose not to settle because the founder offered \$1.5 million for company A that had nothing in it when she became its owner. She described the

⁵ Tr. at 17-99; GEs 1-2; AEs U, EE, LL.

⁶ Tr. at 17-99; GEs 1-2; AE G.

⁷ Tr. at 17-99; AE LL.

decision to become company A's owner as the "absolute worst decision of my entire life."⁸

Between 2012 and 2017, Applicant also experienced a tenant who stopped paying rent on a rental property that she and her husband purchased and lived in as their primary residence from November 2004 until November 2007. The mortgage on their current residence that they have lived in since November 2007 increased by \$2,000, at the conclusion of a trial period during a loan modification process that was ongoing as of the date of the hearing. A vendor for company A did not pay for consulting work. The founder of company A created unforeseen company bills. Applicant's father became ill and died. Her mother received a serious medical diagnosis. Her daughter struggled in college. When Applicant received the SOR in May 2016, she incurred additional attorney's fees when she hired an attorney to initially assist with ensuring she would not lose her security clearance. Applicant stated that she kept all of her creditors apprised of her financial situation during this period.⁹

SOR ¶¶ 1.a and 1.b are the secondary and primary mortgages, respectively, for Applicant's home, which was in foreclosure as of the date of the hearing. When they began falling behind on their primary mortgage payments for SOR ¶ 1.b in June 2012, Applicant stated that she and her husband believed they had loss of income protection for their mortgage accounts because they had received notifications from the creditor stating such. The creditor ultimately told them that income protection was not on their policy.¹⁰

Applicant stated that on the creditor's advice that their best option for SOR ¶ 1.b was to obtain a loan modification, and on the creditor's assurance that the loan modification process would not take long, she and her husband stopped paying SOR ¶ 1.b and began the loan modification process in June 2012. As of the date of the hearing, the loan modification process was ongoing. Applicant stated that they have gone through at least eight resubmissions of their loan modification paperwork, as the creditor has either lost the paperwork or repeatedly asked for additional documentation. She provided documentation to corroborate her testimony concerning their efforts to obtain a loan modification for SOR ¶ 1.b.¹¹

By December 2013, Applicant and her husband began falling behind on their secondary mortgage payments for SOR ¶ 1.a. When Applicant received the SOR, the loan modification process for SOR ¶ 1.b was still ongoing, and she and her husband were still in discussions with the creditor as to a resolution for both SOR ¶¶ 1.a and 1.b. To avoid falling further behind on SOR ¶ 1.a, they applied the money they would have

⁸ Tr. at 17-99; AEs G-H, LL.

⁹ Tr. at 17-99; GE 1.

¹⁰ Tr. at 17-99; GE 1; AEs L, X, Y, KK, LL.

¹¹ Tr. at 17-99; GE 1; AEs L, Y, KK, LL.

used for SOR ¶ 1.b to bring SOR ¶ 1.a current. Applicant provided documentation to show that SOR ¶ 1.a is current.¹²

Applicant stated that they have been unable to sell their home without taking a substantial financial loss due to a loss of equity. When they purchased the home in late 2007, the value of the home was \$900,000. As of June 2017, the estimated value of the home was \$708,000. If they are unable to get the loan modified for SOR ¶ 1.b, Applicant and her husband plan to discuss with the creditor their options for resolving their mortgage debts in SOR ¶¶ 1.a and 1.b, to include an offer in compromise or a deed in lieu of foreclosure. They intend to resolve any remaining deficiency balance.¹³

SOR ¶ 1.c is a credit card. When Applicant fell behind on this account, she made small payments as a showing of good faith. She successfully negotiated the delinquent balance to \$6,273 prior to receiving the SOR, and she paid \$522 monthly since 2016 to resolve the debt. She provided documentation to corroborate her testimony regarding her payment arrangement, and to show that she paid off the account as of March 2017.¹⁴

SOR ¶ 1.d is the primary mortgage and SOR ¶ 1.g is the secondary mortgage for Applicant's rental property. As with SOR ¶ 1.b, Applicant and her husband sought a loan modification for SOR ¶¶ 1.d and 1.g when they began falling behind on their payments in 2012. She stated that they were approved for a loan modification for SOR ¶ 1.d in late 2014. She provided documentation to corroborate her testimony concerning her efforts to obtain a loan modification for SOR ¶ 1.d, to show that SOR ¶ 1.g has been current since at least July 2016, and to show that SOR ¶¶ 1.d and 1.g are current as of July 2017. Applicant stated that they have had tenants in the rental property for the past three years who have timely paid their rent. While Applicant and her husband have also been unable to sell this property without taking a significant financial loss due to a loss of equity, it is their intent to sell it.¹⁵

SOR ¶ 1.e is a department store charge account. Applicant stated that she started paying this debt before she received the SOR. She provided documentation to show that she paid it in July 2016.¹⁶

SOR ¶ 1.f is a car loan. Applicant stated that she had been attempting to settle this debt before she received the SOR. She provided documentation to show that she paid this debt in April 2016.¹⁷

¹² Tr. at 17-99; GE 1; AEs U, V, X, EE, LL.

¹³ AEs U, KK, LL.

¹⁴ GEs 1-2; AEs M, U, Z, EE.

¹⁵ Tr. at 17-99; GEs 1-2; AEs N, P, AA, BB.

¹⁶ Tr. at 17-99; AEs R, V.

¹⁷ Tr. at 17-99; GEs 1-2; AEs O, HH, LL.

SOR ¶ 1.h is a March 2015 lien entered against Applicant for delinquent state personal income taxes for tax period 2011. Applicant stated that when she and her husband received notification in 2015 concerning their delinquent taxes, she thought they had already set up a payment plan for the outstanding taxes, and she was unaware that a lien had been placed against them until she received the SOR. When she contacted the state tax office to set up another payment plan, she learned that the account they had previously set up for their initial payment plan was not auto deducting the payments. She also discussed with the state tax office the potential for resolving this lien through an offer in compromise, though Applicant understands that she has to be in the financial position to pay should she proceed that route. She stated that they have made timely payments towards this lien since March 2015, and they expect to have the lien resolved within six months. She provided documentation to show that they made 17 payments of \$250 from January 2016 to June 2017.¹⁸

Applicant also incurred two delinquent debts that are not alleged in the SOR. The first debt involved a timeshare that Applicant and her husband purchased in 1999, that became delinquent for \$25,000 between 2012 and 2016. Applicant provided documentation to show that they sold the timeshare back to the creditor in November 2016, and the account was closed as of April 2016. The second debt involved \$28,000 in federal income taxes for tax periods 2009 through 2011. Applicant stated that after she and her husband filed their federal income tax returns for these tax periods, the IRS informed them that their returns were incorrect and they owed \$28,000. Applicant stated that they made a payment arrangement with the IRS of \$587 monthly, and she provided documentation to show that they made 19 payments of \$587 from January 2017 to June 2017. She also stated that they have timely filed all subsequent federal income tax returns, any tax refunds have been intercepted and applied towards their outstanding federal taxes, and they do not have any other outstanding federal taxes.¹⁹

Applicant does not have any other delinquent debts. She and her husband received financial counseling in July 2016. They developed and have used a budget to resolve their debts, and they intend to continue to do so. They have the financial means to continue resolving SOR ¶¶ 1.b and 1.h, as well as their outstanding federal taxes. In addition to Applicant's longstanding career in the military, she is extensively involved in and has received numerous awards for her contributions to her community.²⁰

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.

¹⁸ Tr. at 17-99; GE 2; AEs Q, CC, DD, EE, FF, GG.

¹⁹ Tr. at 17-99; GE 2; AEs U, II, JJ.

²⁰ Tr. at 17-99; GEs 1-5; AEs A-LL.

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(a), 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 national security eligibility will be resolved in favor of the 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.

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 Exec. Or. 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* Exec. Or. 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol

abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant was unable to pay her debts, to include her state income taxes for tax period 2011. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f) as disqualifying conditions.

Conditions that could mitigate the 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Since Applicant's financial problems started in June 2012, Applicant received financial counseling, developed a budget, and has made a good-faith effort to resolve her delinquent debts. She resolved SOR ¶¶ 1.a and 1.c to 1.g. She stated that she has had a payment arrangement of \$250 monthly since March 2015 for SOR ¶ 1.h, and provided documentation to show that she made 17 payments of \$250 from January 2016 to June 2017. She intends to continue paying SOR ¶ 1.h in accordance with this arrangement.

Applicant stated that she has been pursuing a loan modification for SOR ¶ 1.b since June 2012, at the creditor's advice that it was her best option for resolving it, and with the creditor's assurance that the process would not take long. She provided documentation to corroborate her testimony concerning her lengthy efforts to obtain a loan modification for SOR ¶ 1.b. She intends to continue working with the creditor to achieve a loan modification for SOR ¶ 1.b. If unsuccessful, she will work with the creditor to discuss options for resolving it as well as the related secondary mortgage account in SOR ¶ 1.a. Applicant intends to resolve any deficiency balance for SOR ¶¶ 1.a and 1.b should there be one.

While not alleged in the SOR, Applicant resolved a delinquent timeshare debt in November 2016 and has been on a payment plan of \$587 monthly to resolve \$28,000 in federal income taxes for tax periods 2009 through 2011. She provided documentation to show that she and her husband made 19 payments of \$587 from January 2017 to June 2017, and she also stated that they have timely filed all subsequent federal income tax returns, any tax refunds have been intercepted and applied towards their outstanding federal taxes, and they do not have any other outstanding federal taxes.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has not incurred additional delinquent debts. While Applicant has unresolved SOR debts, and one unresolved non-SOR debt, she has demonstrated a good-faith effort and has the means to continue to resolve her remaining debts. AG ¶¶ 20(a) to 20(d) and 20(g) are applicable.

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(d):

- (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 also considered Applicant's 20 years of honorable military service. While Applicant has unresolved SOR debts and an unresolved non-SOR debt, Applicant credibly testified at hearing and there is sufficient evidence to show that she is committed to resolving them.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	For Applicant
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Subparagraphs 1.a - 1.h:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge