



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 15-07758
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

07/20/2017

Decision

HOGAN, Erin C., Administrative Judge:

On June 15, 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 June 8, 2017, the AGs were updated and replaced the AGs effective September 1, 2006. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On July 7, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 27, 2017. The case was assigned to me on May 27, 2017. On June 2, 2017, a Notice of Hearing was issued, scheduling the hearing for June 14, 2017. The hearing was held as scheduled. During the hearing, the Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered five

exhibits which were admitted as Applicant Exhibits (AE) A – E. After the hearing, I marked the attachments to Applicant's Answer to the SOR as AE F. The transcript (Tr.) was received on June 22, 2017. The record was held open until June 28, 2017, to allow Applicant to submit additional documents. Applicant submitted additional documents which were admitted as AE G – AE M. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 42-year-old potential employee of a DOD contractor seeking to maintain a security clearance. She has worked for DOD contractors in various jobs since 2003. She was let go from her recent employer about a month ago. She has an employment offer with another DOD contractor subject to the outcome of this security clearance proceeding. She has a high school diploma. She is in the process of divorcing her husband. She has three children. A son and a daughter who are in their early 20s, and a six-year-old son. All of her children still live with her. Applicant is also the legal guardian of her cousin's son, age 17. (Tr. at 14, 36; Gov 1; Answer to SOR)

On July 11, 2014, Applicant submitted an electronic questionnaires for investigations processing (e-QIP). Applicant's security clearance background investigation revealed that she had the following delinquent debts: a \$30 medical bill that was placed for collection (SOR ¶ 1.a: Gov 3 at 2; Gov 4 at 2); a \$30 medical bill that was placed for collection (SOR ¶ 1.b: Gov 3 at 2; Gov 4 at 2); an \$11,109 charged-off automobile loan (SOR ¶ 1.c: Gov 3 at 2; Gov 4 at 2; Gov 5 at 4); a \$395 charged-off credit union account (SOR ¶ 1.d: Gov 3 at 2; Gov 4 at 2; Gov 5 at 4); and a \$2,414 medical account that was placed for collection. (SOR ¶ 1.e: Gov 5 at 5)

Additional delinquent accounts include: an \$816 cable television account that was placed for collection (SOR ¶ 1.f: Gov 5 at 6); a \$758 delinquent cell phone account that was placed for collection (SOR ¶ 1.g: Gov 5 at 6); a \$218 medical account placed for collection (SOR ¶ 1.h: Gov 5 at 6); a \$205 traffic ticket placed for collection; (SOR ¶ 1.i: Gov 5 at 6); a \$150 medical account that was placed for collection (SOR ¶ 1.j: Gov 4 at 2; Gov 5 at 6); and a \$49 music club account placed for collection (SOR ¶ 1.k: Gov 5 at 7).

Applicant states that her pending divorce and chronic medical conditions contributed to her inability to pay her debts. Her husband cannot be located and she cannot finalize the divorce without his appearance because of the child support, alimony, and custody issues. He provides no financial support for the family. (Tr. 26, 31, AE A, AE F at 5)

Applicant's medical problems began in 2008. In 2010, she was rushed to the emergency room because of an ectopic pregnancy. She was carrying twins. One twin died and the other survived, but has numerous medical issues and special needs. In 2013, Applicant was diagnosed with stage 2 cancer. After an operation and radiation treatment she was in remission. A few weeks before the hearing, she learned that the

cancer has returned. During her medical treatments, she would be out of the office for extended periods of time. She would often have to take leave without pay because she did not have a lot of leave. She has no savings. (Tr. 27-30, 41-42; AE C; AE F at 2—4)

Applicant is under a lot of stress because she is the sole provider for her children. Her father passed away this past year and her cousin, with whom she was as close as a sister, was murdered. After her death, she became the legal guardian of her cousin's 17-year-old son. (Tr. 29-30)

The status of the SOR debts are:

SOR ¶ 1.a and SOR ¶ 1.b: two \$30 medical accounts placed for collection. Applicant's financial specialist formally disputed the debts. The outcome of the dispute is pending. (Tr. 43-44; AE D; AE H)

SOR ¶ 1.c: \$11,109 charged-off automobile loan. At the hearing, Applicant believed this automobile loan belonged to her son. She co-signed the loan. She learned after the hearing, that this was a loan for one of Applicant's cars that was repossessed in 2013. Applicant agreed to pay \$25 a month to repay the debt (Tr. 44-47; AE B; AE G; AE K).

SOR ¶ 1.d: \$395 charged-off account with credit union: Applicant settled and paid this debt on November 3, 2016. (Tr. 48; AE I)

SOR ¶ 1.e: \$2,414 medical account placed for collection: Applicant claims this debt was paid, disputed, and deleted from her credit report. A statement from her previous financial counselor verified this in a letter dated June 24, 2015. (Tr. 49; AE M)

SOR ¶ 1.f: \$816 cable television bill placed for collection: The debt was paid on August 24, 2016. (Tr. 50; AE E at 13-14; AE J)

SOR ¶ 1.g: \$758 cell phone bill placed for collection: Applicant settled and paid this debt on June 15, 2017. (Tr. 51; AE L)

SOR ¶ 1.h: \$218 medical debt that was placed for collection: Applicant disputes this debt. It is not listed on her recent credit reports. (Tr. 51; Gov 3; AE E)

SOR ¶ 1.i: \$205 speeding ticket: Applicant disputes this debt. It is not listed on her most recent credit reports. It was disputed and deleted in June 2015. (Tr. 51; AE M; Gov 3; AE E)

SOR ¶ 1.j: \$180 medical bill placed for collection: Applicant disputes this debt. She claims it is paid. It is not listed on her most recent credit reports. (Tr. 52; Gov 3; AE E)

SOR ¶ 1.k: \$49 music club account placed for collection: Applicant denies this debt. She does not recognize this account. It does not appear on her recent credit reports. (Tr. 52; Gov 3; AE E)

During the hearing, Applicant provided a recent copy of her credit report, dated June 13, 2017. Several additional delinquent accounts were added to include a \$1,637 collection account for past due rent (AE E at 8); a \$450 cable television account placed for collection (AE E at 8-9); an \$84 account placed for collection (AE E at 9-10); a \$227 charged-off credit card account (AE E at 10); a \$60 medical laboratory collection account (AE E at 11-12); a \$4,933 car loan that was charged-off in January 2015 (AE E at 17 (This is likely her son's car loan which she co-signed.))

Applicant recently hired a credit repair firm to assist her with disputing and/or settling her delinquent debts. In 2016, she hired another credit repair firm, but stopped the agreement after a year because she thought that they had not made any progress on resolving her debts. Applicant's current financial firm sent out disputes regarding all of the accounts on her credit report on June 13, 2017. No response was received at the close of the record. (AE H)

Applicant's June 2017 credit report also indicated accounts that were not alleged in the SOR, but were settled and paid, to include: a medical account with the account number 123660XX (AE E at 6 and 14); a \$661 credit card account (AE E at 12); and an account that settled for less than the full balance (AE E at 13). Applicant is paying what she can afford to pay under the circumstances. She is current on federal and state taxes. (Tr. 57)

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 are useful 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, 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(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 access for national security eligibility will be resolved in favor of the 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 that 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 (EO) 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 *a/so* 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 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has encountered financial problems for several years, resulting in car repossessions, medical debts, and some consumer debts. The SOR alleged 11 delinquent debts with an approximate total of \$16,204. The largest debt is an \$11,109 car repossession (SOR ¶ 1.c). There are five medical accounts, totaling \$2,872; and five consumer accounts totaling \$2,223. AG ¶¶ 19(a), 19(b), and 19(c) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his 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 his or 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 his or her finances in such a way as to meet his or her 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))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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;

(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 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 resolved the issue.

AG ¶ 20(a) does not apply because Applicant's financial problems continue. She has incurred delinquent accounts since at least 2008 when her medical problems began.

AG ¶ 20(b) applies because circumstances beyond Applicant's control have adversely affected her finances. Her husband left her and does not pay child support. She is unable to finalize the divorce because he cannot be located. Applicant has a special needs child. She has suffered from serious health issues since 2008. Applicant is also currently unemployed which impacts her ability to pay her debts. Considering the challenges Applicant has been faced with over the past several years, she acted responsibly under the circumstances. Aside from the car repossession, she only had five consumer debts totaling \$2,223. She does not live above her means and appears to be trying to meet her family's daily living expenses. When she can, she attempts to resolve her delinquent debts.

AG ¶ 20(d) applies because Applicant is making a good-faith effort to resolve her delinquent debts. She provided proof that she resolved the debts alleged in SOR ¶¶ 1.d, 1.f, and 1.g. She recently entered into repayment agreements with the car repossession debt alleged in SOR ¶ 1.c. Applicant is putting forth a good-faith effort to resolve her delinquent debts within her means.

AG ¶ 20(e) partially applies. Applicant formally disputed all of her debts. At the close of the record, she had not received results of the outcome of her disputes. The outcomes of the disputes are unclear. However, she is making efforts to resolve her delinquencies.

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(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 considered Applicant's family circumstances and health issues. I considered that her estranged husband does not provide child support. While Applicant's financial history is not perfect, she is doing what she can to resolve her debts based on her current financial situation. I have no doubt that Applicant will continue to resolve her debts when she finds full-time employment. 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.k:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge