



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



In the matter of:)
)
) ISCR Case No. 16-00956
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/27/2017

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 August 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 (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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on September 27, 2016, and requested a hearing before an administrative judge. The case was assigned to me on August 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 25, 2017, scheduling the hearing for September 22, 2017. Since Applicant

did not receive the notice, DOHA issued an amended notice on September 22, 2017, rescheduling the hearing for November 3, 2017. I convened the hearing as rescheduled.

The Government amended the SOR, pursuant to ¶ E3.1.17 of the Directive, to clarify the allegations in ¶¶ 1.d, 1.e, and 1.g, and provided notice to Applicant on September 19, 2017. At hearing and without objection from Applicant, the Government further amended the SOR to conform ¶ 1.c to the evidence.¹ The Government's demonstrative exhibit was appended to the record as Hearing Exhibit (HE) I. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection.² Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until December 1, 2017, for Applicant to submit additional documentation. She timely provided additional evidence, which I marked collectively as Applicant's Exhibit (AE) B. I appended to the record as HEs II and III the Government's amendment to the SOR and the Government's email indicating no objection to AE B, and admitted AE B into evidence. DOHA received the hearing transcript (Tr.) on November 13, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.g., 1.h, and 1.i, and denied SOR ¶¶ 1.b, 1.f, 1.i, 1.j, and 1.k.³

Applicant is 49 years old. She obtained her high-school diploma in 1994 and her bachelor's degree in 1998. She has worked as a developer for her current defense contractor since 1999, and as of the hearing, was a software engineer. She has held a DOD security clearance since 1999.⁴

Applicant is unmarried. She has an adult son who was in college, working, and recently moved out of her home. He made minor contributions to the household when he lived with Applicant.⁵

The SOR alleges three judgments totaling \$13,842 filed against Applicant in 2012, 2014, and 2015; a \$14,475 delinquent mortgage account; a \$35,080 delinquent student loan account; six delinquent consumer debts totaling \$47,190; and that her wages were garnished in March 2013 for \$2,684. The allegations are established by

¹ Tr. at 39.

² At Applicant's objection and with no objection from the Government, I struck from GE 5 and did not admit into evidence the portion on the last page that did not pertain to Applicant's July 7, 2015, personal subject interview. Tr. at 22-26; GE 5.

³ Response to the SOR; Tr. at 14-16.

⁴ Tr. at 6-9, 60-61, 70-71; GEs 1, 2.

⁵ Tr. at 63-65, 70; GEs 1, 2.

Applicant's admissions and credit reports from January 2015, February 2016, and November 2016. Applicant also listed and discussed her delinquent debts in her November 2014 security clearance application and during her July 2015 interview.⁶

Applicant attributed her delinquent debts to the loss of her then-boyfriend's income, after he moved out of her home, shortly after she purchased it in 2006. She acknowledged during her July 2015 interview that she also made bad decisions by lending money to family members and living outside her means. She believed that some of the debts reported on her credit reports belonged to another individual with the same name.⁷

Since 2006, Applicant attempted to address her debts by working overtime. She also supplemented her annual income of \$90,000 by bartending for two years from 2013 to 2014, during which time she averaged around \$200 weekly. She was unable to continue bartending long term and maintain her full-time job. She also contacted her creditors to try to work out payment arrangements to resolve her debts.⁸

SOR ¶ 1.a is for a \$14,475 delinquent mortgage account for Applicant's home; SOR ¶¶ 1.c, 1.d, 1.e, and 1.g are for Applicant's homeowner's dues; and the garnishment of her wages in SOR ¶ 1.i for \$2,684, in March 2013, was tied to her delinquent homeowner's dues. She refinanced her mortgage between 2015 and 2016 to \$1,100 monthly. She was current on her mortgage for at least one year as of the hearing date.⁹

When Applicant purchased her home, she did not understand that her \$900 monthly mortgage was separate from her \$200 monthly homeowner's dues. She paid SOR ¶¶ 1.c and 1.d. Her wages were garnished to resolve the judgments in SOR ¶¶ 1.e and 1.g; these judgments are not reported on her most recent credit reports from November 2017. In paying SOR ¶¶ 1.c, 1.d, 1.e, and 1.g, as well as SOR ¶ 1.h as discussed below, she became delinquent on her homeowner's dues for 2017 by approximately \$1,400. As of the hearing, she was working on an arrangement with the homeowner's association to resolve her arrears and pay her monthly dues.¹⁰

SOR ¶ 1.b is a \$20,776 charge-off for a car Applicant leased. A February 2013 letter from the leasing company reflects that Applicant's lease payments were completed and the car was returned. Because she had not received any further correspondence from the leasing company concerning an outstanding balance, she believed this debt was erroneously reported as delinquent on her credit reports. Despite the leasing company's 2013 letter, Applicant's November 2017 credit reports continue to

⁶ Response to the SOR; GEs 1-5.

⁷ Tr. at 30-36, 50, 61-63, 67; GEs 1, 5.

⁸ Tr. at 30-36, 50, 61-63, 67; GEs 1, 5.

⁹ Tr. at 30-37, 39-45, 59-60; GEs 1, 5; AE B.

¹⁰ Tr. at 30-37, 39-45, 59-60, 68-69; GEs 1, 5; AE B.

report this charge-off. The credit reports also reflect that Applicant was paying this debt at \$700 monthly.¹¹

Applicant was unaware of SOR ¶¶ 1.f and 1.i. As of the hearing date, she had not begun to investigate these debts, but she intended to. She believed that SOR ¶ 1.i may have potentially fallen off her recent credit reports because of the work done on her behalf by the company from which she sought financial counseling in 2012. Both of these debts were not reported on her November 2017 credit reports.¹²

SOR ¶ 1.h is for a \$35,080 student loan in collection status. Applicant obtained the student loan to finance her college education. She indicated during her July 2015 interview that she had an arrangement with the student loan company to automatically debit \$500 from her bank account monthly. She believed that when the automatic deductions stopped, her student loan was paid. As of her hearing, her wages were being garnished \$1,000 monthly by the student loan company, and she believed that the remaining balance of her student loan was \$12,000.¹³

In her post-hearing submission, Applicant indicated that she spoke with the student loan company, who informed her that there was a discrepancy between her student loan and the agency handling it; she was awaiting the student loan company's resolution of that discrepancy; and the balance of her student loan was \$45,041. Her November 2017 credit reports reflect that she has two student loans totaling \$55,033, for which she carried a delinquent balance totaling \$5,155.¹⁴

Applicant testified that while she was aware SOR ¶ 1.j was reported on her credit reports, she was unaware of the details surrounding it. She attempted to research the debt through the company from which she sought financial counseling in 2012, but was unable to obtain any information. This debt was not reported on her November 2017 credit reports.¹⁵

SOR ¶ 1.k is a delinquent medical debt for \$115. This debt is unpaid, and Applicant is unaware of the details surrounding it. She attempted to research the debt through the company from which she sought financial counseling in 2012, but was unable to obtain any information. This debt was not reported on her November 2017 credit reports.¹⁶

¹¹ Tr. at 37-39; GE 5; AEs A, B.

¹² Tr. at 45, 51-55, 69; GE 5; AE B.

¹³ Tr. at 45-50; GE 5.

¹⁴ Tr. at 45-50; GE 5; HE III; AE B.

¹⁵ Tr. at 53-54, 57-58, 69; GE 5; AE B.

¹⁶ Tr. at 58-59, 69; GE 5; AE B.

Applicant sought financial counseling in 2012, and the company assisted her with removing debts from her credit report that were not hers. She does not have any other delinquent debts, and she is current on her payments for the used car that she purchased in 2015. She currently earns \$115,000 annually, her monthly net pay is \$4,000, her monthly expenses are around \$2,600, and her monthly net remainder varies from \$200 to \$500 depending on her overtime.¹⁷

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(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.

¹⁷ Tr. at 36, 38, 53-54, 59-60, 65; GE 5; AE B.

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

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; and
- (c) a history of not meeting financial obligations.

Applicant was unable and has a history of not paying her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) 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; and

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

Conditions beyond her control largely contributed to Applicant's financial problems. However, Applicant acknowledged that she also made bad decisions by lending money to family members and living outside her means.

Since her financial problems started in 2006, Applicant received financial counseling and has made a good-faith effort to resolve her delinquent debts. She resolved SOR ¶ 1.a by refinancing her mortgage. She resolved SOR ¶¶ 1.c, 1.d., 1.e, and 1.g, though she did so, in part, through the garnishment of her wages in SOR ¶ 1.i. While she was \$1,400 in arrears on her homeowner's dues for 2017, she was working on an arrangement with the homeowner's association to resolve it. She was in the process of resolving SOR ¶¶ 1.b and 1.h, and as of her November 2017 credit reports, she made significant progress in resolving SOR ¶ 1.h, as the outstanding delinquent balance was \$5,155.

Though SOR ¶¶ 1.f, 1.i, 1.j, and 1.k were not reported on her most recent credit reports, Applicant credibly testified that she was unaware of them, and she intended to research them further.

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). While she has unresolved debts remaining, she has demonstrated a good-faith effort and has the means to continue to resolve them. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) 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. Applicant has made efforts to resolve her debts. While she has unresolved debts remaining, she 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 or 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
Subparagraphs 1.a - 1.l:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge