



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



In the matter of:)
)
) ISCR Case No. 16-02445
)
Applicant for Security Clearance)

Appearances

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

11/09/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On November 18, 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

Applicant responded to the SOR on December 8, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 20, 2017. The

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.

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 31, 2017, scheduling the hearing for August 24, 2017. I convened the hearing as scheduled.

The Government's discovery letter and exhibit list were appended to the record as Hearing Exhibits (HE) A and B, respectively. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. 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 September 7, 2017, for Applicant to submit additional documentation. I granted Applicant a one-week extension, and left the record open until September 14, 2017. Applicant did not provide additional evidence. DOHA received the hearing transcript (Tr.) on September 1, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.d to 1.k, 1.m to 1.q, and 1.s to 1.y. She denied the allegations in SOR ¶¶ 1.a, 1.c, 1.i, and 1.r. She is 35 years old. She has worked for a defense contractor since July 2001. She has held a DOD security clearance since 2003. She received her high-school diploma in 2000 and attended colleges between 2006 and 2013, but did not earn a degree. As of the hearing date, she was in the process of pursuing her certificate as a state emergency technician. She was married from October 2002 to May 2006, and she has three children, ages 19, 13, and 6.²

The SOR alleges a judgment entered against Applicant in January 2011 for \$3,011; delinquent taxes to state A for \$2,324; delinquent taxes to state B for \$698; a wage garnishment in June 2016 for \$2,781; two delinquent medical debts totaling \$511; and 19 delinquent consumer accounts totaling \$39,552. The SOR allegations are established by Applicant's admissions and credit reports from June 2015 and August 2016. Applicant also disclosed her debts on her May 2015 security clearance application and discussed them in her November 2015 subject interview.³

Applicant attributes her financial problems to a three-month period from January to March of 2011, when she was placed on leave without pay (LWOP) by her employer due to a contract loss. She did not collect unemployment, and she supported herself through credit cards. She testified that in 2006, she encountered financial troubles after the separation and divorce from her husband, but she was able to bounce back. Though she had a partner after her divorce, she carried the primary responsibility for paying the bills. She indicated that most of her debt comes from trying to support her children. While she does not pay the tuition for her 19-year-old child, who is a freshman in college, she sends him money monthly. She receives child support from only one of her child's fathers. Her ex-husband, the father of her middle child, sends her \$500 monthly,

² Applicant's SOR response; Tr. a 7-8, 19, 22, 24-29, 80; GEs 1, 2.

³ SOR; Applicant's SOR response; GEs 1-4.

while the fathers of her eldest and youngest children are delinquent on their child support obligations. She acknowledged that she made bad decisions, got over her head in debt, and realized she was living outside her means.⁴

Applicant denied SOR ¶ 1.a. She testified that she did not recall owing state A \$2,324 in unpaid taxes; however, she did not dispute her wages were garnished by state A's department of taxation in September 2014, for a state tax levy of \$2,324. She testified that she contacted state A and was told that she did not have an outstanding balance. She believed she paid any outstanding taxes to state A. As of the hearing date, her wages were not being garnished. In her November 2015 subject interview, Applicant indicated that she forgot to pay her 2013 income taxes for state A after she filed her federal and state income taxes for that year. She received notification in the mail in 2015 of her outstanding taxes, and she subsequently had her paycheck garnished for two months to resolve this debt. I find SOR ¶ 1.a for Applicant.⁵

SOR ¶ 1.b concerns the garnishment of Applicant's wages in June 2016 for \$2,781, for back rent and late fees at an apartment she lived in from January 2012 to March 2015. She tried to negotiate monthly payments with the landlord after she moved out of the property, but he obtained a judgment because he wanted more money than she could afford to pay. She testified that she resolved the back rent, and her wages were not being garnished as of the hearing date. I find SOR ¶ 1.b for Applicant.⁶

Applicant denied SOR ¶ 1.c, as she is still an active member with a savings account at this credit union. She acknowledged that she may have previously had an overdraft on this account. She called the credit union and she was told that she does not have an outstanding balance. The credit union did not provide her with supporting documentation because she did not have an outstanding debt with them. I find SOR ¶ 1.c for Applicant.⁷

SOR ¶¶ 1.d and 1.f are medical debts. Applicant testified that her children are under her health insurance. When possible, she makes payments of \$25 to \$50 towards SOR ¶ 1.d. While she did not recall SOR ¶ 1.f, she testified that she may have paid the debt with her health savings account. She testified that she would provide documentation to show that she was paying SOR ¶ 1.d, and that she paid SOR ¶ 1.f.⁸

SOR ¶ 1.e is for a credit card that Applicant used to pay for household expenses. She became delinquent in 2015, but she could not recall the reason she became

⁴ Tr. at 19, 22-24, 27-29, 60-71, 74; GEs 1, 2.

⁵ Tr. at 21, 30-33, 74-76; GE 2.

⁶ Tr. at 19-21, 30-36, 47, 74-76; GEs 1, 2.

⁷ Tr. at 21-22, 36, 74.

⁸ Tr. at 36-38, 79.

delinquent. As of the hearing date, she had not made any progress in contacting the creditor to satisfy this debt.⁹

SOR ¶¶ 1.g and 1.k are for the back rent and broken lease fee at an apartment Applicant lived in from August 2009 to March 2011. She fell behind on her rent during the period in which she was on LWOP, and then she had to break her lease. She testified that before she received the SOR, she settled this debt for \$3,000, made a payment arrangement with the creditor of \$200 monthly, and paid it in June 2017. She did not provide corroborating documentation to show that she paid these debts.¹⁰

SOR ¶ 1.h is for a credit card that Applicant used to pay for household expenses. As of the hearing date, she had not made any progress in contacting the creditor to satisfy this debt.¹¹

SOR ¶ 1.i is for two rent-to-own televisions for which Applicant paid \$175 monthly, until she became delinquent in 2015. As of the hearing date, she testified that she still had the televisions, had yet to return them, and believed the account was charged off.¹²

SOR ¶ 1.j is for an \$18,000 car Applicant cosigned for her then-boyfriend in September 2013. After their relationship ended in 2014, he stopped making the payments of \$400 monthly. Applicant made the monthly payments for several months until June 2014, when she voluntarily surrendered it because she could not afford it. The August 2016 credit report lists this debt as past due for \$5,521, and charged off for \$15,197. Applicant testified that she received an invoice from the creditor, but she could not recall the balance on the invoice. She also testified that she had not contacted the creditor because she did not have the money to pay this debt.¹³

SOR ¶ 1.l is for a rent-to-own furniture account Applicant opened in January 2013 that was charged off in November 2013. Applicant testified that she did not recall the reason she became delinquent. She testified that she returned the rented furniture, but the creditor charged her for the lease of the furniture because she broke the lease. She testified that she disputed the balance with the creditor, and last communicated with them in 2013. She testified that she planned to make a payment arrangement with the creditor when they reached an agreement on the balance.¹⁴

⁹ Tr. at 37-38; GE 2.

¹⁰ Tr. at 19-21, 39-41, 47, 74, 78-79; GEs 1, 2.

¹¹ Tr. at 41.

¹² Tr. at 41-42.

¹³ Tr. at 44-47, 70-71, 79-80; GEs 1, 2, 4.

¹⁴ Tr. at 42-44, 47-50, 77; GEs 2, 4.

SOR ¶ 1.m is for Applicant's personal car that she purchased in May 2008, and was charged off in October 2012. Applicant testified that she voluntarily repossessed the car because the cost of repairs was more than she could afford. She received correspondence from the creditor after she turned in the car, but she had not communicated with them as of the hearing date.¹⁵

Applicant believes SOR ¶¶ 1.n and 1.p are duplicate accounts. The June 2015 credit report reflects that Applicant's account was placed for collection with a collection agency. I find that SOR ¶ 1.n is a duplicate of SOR ¶ 1.p. Applicant testified that she opened the cellular account in May 2008 solely in her name, but with multiple people on the account. She became delinquent in 2011, because her partner and his brother ran up the bill. She testified that she had no communication with the collection agency or the cellular company.¹⁶

Applicant believes SOR ¶ 1.o is for tuition she owes to a state university. She testified that she recently called state B's department of taxation, and they could not find her in the system. She intended to follow-up on this debt.¹⁷

SOR ¶ 1.q is for an outstanding childcare balance. In an attempt to cut costs, Applicant took her child out of daycare but she did not give the requisite two weeks' notice.¹⁸

SOR ¶ 1.r is for delinquent personal property taxes. Applicant testified that she satisfied this debt. She did not provide corroborating documentation to show that she paid this debt.¹⁹

SOR ¶¶ 1.s, 1.t, 1.u, 1.w, and 1.y are for outstanding speeding tickets incurred by Applicant's prior partner's use of her car. Applicant testified that she was unaware of these tickets until she received the SOR. She called the creditor to obtain more information, but she had not yet paid the outstanding tickets. She intended to resolve them.²⁰

SOR ¶¶ 1.v and 1.x are for outstanding cable bills. Applicant testified that she became delinquent on her cable account when she was on the LWOP period. She indicated during her November 2015 personal subject interview, that she forgot to pay

¹⁵ Tr. at 50-52; GEs 1, 2, 4.

¹⁶ Tr. at 52-56; GEs 1, 2, 4.

¹⁷ Tr. at 54-55; GE 2.

¹⁸ Tr. at 56; GEs 1, 2.

¹⁹ Tr. at 56-57, 74, 77; GE 2.

²⁰ Tr. at 57-60; GEs 1, 2.

her cable bills before she moved into a new apartment. As of the hearing date, she had not made any attempts to pay these debts.²¹

In addition to the SOR debts, Applicant testified that she has other outstanding debts she is trying to resolve. She pays \$50 monthly towards a \$150 water bill. She also pays \$100 monthly towards an \$800 bill from July 2017, for her prior apartment's move-out fees and final electric and cable bills. Applicant also indicated, in both her May 2015 security clearance application and her November 2015 subject interview, that she had an unresolved balance of \$3,745 for her late withdrawal from classes for two semesters at a university she attended in January to May 2007 and August to December 2013.²²

Applicant has been in good standing with her company. After returning to work in 2011 after the three-month LWOP period, she has held continuous employment. Since receiving a promotion in 2016, her annual salary as of the hearing date was \$82,000. She is making efforts to satisfy her debts and live better financially. She received financial counseling in September 2016, from an agency approved to provide credit counseling, because she knew she needed to get her finances under control. She also consulted with a bankruptcy attorney in 2016. She intended to use her bank's debt management service to resolve her debts. She now has only one credit card, which she tries to use for gas and emergencies. In an effort to assist each other financially, Applicant and her mother moved in together in July 2017; they split the household bills; and Applicant intended to use any reserves to resolve her delinquent debts. She recently pulled her credit report. She testified that that she paid other smaller debts not listed in the SOR. She intended to pay her smaller SOR debts first, then work out payment plans to resolve her larger SOR debts. She acknowledged that in regards to her finances, she has not been able to really breathe yet.²³

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

²¹ Tr. at 59-60; GE 2.

²² Tr. at 62-67; GEs 1, 2.

²³ Tr. at 19, 22- 27, 30, 60-77; GEs 1, 2; AE A.

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 delinquent state taxes. 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;
- (c) 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.

Applicant resolved the debts in SOR ¶¶ 1.a, 1.b, and 1.c; the June 2015 credit report reflects that SOR ¶ 1.n is a duplicate of SOR ¶ 1.p. The remainder of Applicant's SOR debts, however, are unresolved. She did not provide corroborating documentation to show that she resolved or tried to resolve them. There is insufficient evidence to conclude that her financial problems are unlikely to recur. Her failure to address her delinquent debts casts doubt on her current reliability, trustworthiness, and good

judgment. AG ¶¶ 20(a) does not apply. AG ¶ 20(g) applies to SOR ¶ 1.a, but not to SOR ¶¶ 1.o and 1.r.

Conditions beyond her control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that she acted responsibly under the circumstances. Applicant has not provided corroborating documentation of her efforts to resolve her remaining SOR debts. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant provided documentation to show that she received financial counseling in September 2016. However, she has not provided documentation to show that she made a good-faith effort to resolve her remaining SOR debts. Her finances are not under control. AG ¶¶ 20(c) and 20(d) are partially 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.

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.c, 1.n:	For Applicant
Subparagraphs 1.d -1.m, 1.o - 1.y:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge