



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



In the matter of:)
)
) ISCR Case No. 16-02843
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/14/2017

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 November 3, 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 December 1, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 20, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 18, scheduling the hearing for September 6, 2017. I convened the hearing as scheduled.

The Government's discovery letter and exhibit list were appended to the record as Hearing Exhibits (HE) 1 and 2. Government Exhibits (GE) 1 through 3 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 G, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until September 27, 2017, for the parties to submit additional documentation. Applicant timely provided additional evidence, which I marked as AEs H through L and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on September 14, 2017.

Findings of Fact

Applicant admitted all of the SOR allegations. She is 27 years old. She obtained her high-school diploma in 2008 and a bachelor's degree in May 2017. She worked for previous defense contractors from 2015 until she obtained her current job with a defense contractor in January 2016. She was granted a DOD security clearance in November 2015. She is married and she has three minor children.²

The SOR alleges 13 delinquent consumer debts for \$17,173 and two delinquent medical debts for \$2,783. The SOR allegations are established by Applicant's admissions and the credit reports.³

Applicant attributes her delinquent debts to the periods in which she and her husband were either unemployed or earning minimal income. Her spouse was unemployed off and on for a total of two to three years from 2011 until he obtained his current job in June 2017; he only received unemployment benefits between 2011 and 2012. He worked at a pizzeria and earned minimal income between 2014 and 2017. Applicant was a stay-at-home mother for six months to one year prior to obtaining her current job; she did not receive unemployment benefits. Between 2011 and June 2015, she earned minimal income with the jobs she held at a rehabilitation center, a doctor's office, and an elementary school. In 2009, Applicant incurred unexpected medical expenses after she suffered a kidney failure. Applicant stated that she made poor financial decisions in the past by not timely paying her debts because she lacked the income to do so.⁴

² Tr. at 6-8, 22-23, 74-75; GE 1.

³ Response to the SOR; GEs 2, 3; AE K.

⁴ Tr. at 23-30, 62, 72-76; GE 1.

SOR ¶¶ 1.a and 1.o are for a credit union overdraft fee and credit card, respectively, for which Applicant became delinquent in 2009. Applicant testified that the credit union would not permit her to pay the \$38 overdraft fee before she paid the \$898 delinquent credit card. She received correspondence from an attorney for the credit card company several years ago, and she was in contact with him to resolve it. She made a \$300 payment by money order in April 2017, but the attorney would not provide her with a statement reflecting her payment until she paid the credit card in full. She intended to continue to resolve both debts. She provided a copy of her March 2017 credit report reflecting that the overdraft fee carried a zero balance, and the credit card balance was \$598.⁵

SOR ¶ 1.b is for a car Applicant purchased in 2012 for \$14,000. The car was totaled when Applicant's spouse got into a car accident. Prior to the accident, Applicant was current on her car and insurance payments. After the accident, the insurance company refused to pay the balance on the car because the car company refused to give it a signed title. Meanwhile, her car was towed and junked, and the towing company would not release the car or tags to her unless she paid \$1,700, which she could not afford. Applicant spoke with the creditor two weeks prior to the hearing, and she was in the process of negotiating a settlement. While the creditor indicated that it was willing to settle the debt for as low as 25% of the outstanding balance, Applicant would be required to pay the settlement amount within 30 days. Applicant intended to set aside \$300 monthly to settle this debt, and she saved \$350 as of the hearing.⁶

SOR ¶ 1.c is a store credit card for which Applicant became delinquent in 2015. She testified that she paid it in 2016. She provided a September 2017 letter from the collection agency for the store credit card reflecting that Applicant's account carried a zero balance.⁷

SOR ¶ 1.d is for a car Applicant currently owns. She purchased it for \$18,000, and she became delinquent in 2016. As of the hearing date, she was 30 days delinquent. She telephoned the creditor and set up a four-month payment plan that would have brought the account current by the end of October 2017. Since her spouse is working, she anticipated being able to continue to make timely payments on this account. Her March 2017 credit report reflects that this account is current.⁸

SOR ¶ 1.e is for a cable service account for which Applicant believed she became delinquent in 2013. She paid \$25 monthly beginning in mid-2017, and she made a final payment of \$191 in August 2017 to resolve this debt. She provided an

⁵ Tr. at 30-32, 70-71; AEs A, H, K.

⁶ Tr. at 32-37, 69-70; AEs A, K.

⁷ Tr. at 37-38; AEs A, K, L.

⁸ Tr. at 38-40, 69; AEs A, K.

August 2017 letter from the collection agency for the cable company reflecting that the account was settled in full.⁹

SOR ¶ 1.f is for a telephone account. Applicant provided documentation to show that she paid this debt in February 2017.¹⁰

SOR ¶ 1.g is for another telephone account. Applicant provided documentation to show that she settled and paid this debt in November 2016.¹¹

SOR ¶ 1.h is for another cable service account. Applicant paid this debt in August 2017. She provided a September 2017 receipt from the collection agency for the cable company reflecting that she paid \$358 in August 2017, and the account was settled in full.¹²

SOR ¶ 1.i is for a gas and electric account for which Applicant became delinquent in 2010. Applicant testified that she gave her father, who was listed as a secondary account holder, money to pay this debt in March 2017. She provided a September 2015 account history reflecting that she made two payments totaling \$971 in April 2017, and an August 2017 letter from the creditor reflecting that this account carried a zero balance.¹³

SOR ¶ 1.j is for a credit card. As of the hearing date, Applicant had recently attempted to contact the collection agency to settle the debt. She intended to pay \$50 monthly to resolve it.¹⁴

SOR ¶ 1.k is for a medical debt. Applicant was unable to locate the creditor as it was no longer reported on her recent credit reports. She will continue to try to locate the creditor to resolve this debt.¹⁵

SOR ¶ 1.l is for a cable account Applicant opened in 2012, at the request of one of her sisters when they lived together, on the condition that the sister paid the account. When the sister moved to another state, Applicant was unable to pay the account. She provided documentation to show that she disputed this debt in August 2017. She acknowledged that if her dispute is unsuccessful, she will have to pay the account.

⁹ Tr. at 40-41, 68-69; GE 1; AEs A, E.

¹⁰ Tr. at 41-42; GE 1; AEs A, C.

¹¹ Tr. at 41-42; GE 1; AEs A, B, K.

¹² Tr. at 42-43; GE 1; AEs A, J.

¹³ Tr. at 43-44, 66-68; GE 1; AEs A, D, I.

¹⁴ Tr. at 44-45; GE 1; AE A.

¹⁵ Tr. at 45-46; GEs 1, 3; AE A.

Applicant learned her lesson from this experience and she has not since cosigned for anyone.¹⁶

SOR ¶ 1.m is for Applicant's cable account. Applicant testified that she set up a payment plan of \$50 monthly for 12 months, and she provided documentation to show that she made one payment of \$50 in September 2017. She intended to continue making these payments until this debt is resolved.¹⁷

SOR ¶ 1.n is for a medical debt Applicant incurred in 2009. Applicant disputed this debt because she believed it should have been covered by state medical assistance she received off and on between 2008 and 2014. She testified that she was in the process of trying to verify whether she had state medical assistance at the time; if so, she intended to provide such proof to the creditor; if not, she intended to pay this debt.¹⁸

Applicant does not have any other delinquent debts. She has not received financial counseling, but she testified that a friend with accounting experience was assisting her with managing her finances. She developed a budget to keep track of her income and expenses. As of the hearing date, her monthly household net income was \$5,400; after expenses, her monthly household net remainder was \$400, which she intended to use to continue to resolve her debts. She made plans to reduce her household expenses, including an impending move to another rental.¹⁹

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.

¹⁶ Tr. at 47-48, 64-66; GE 1; AEs A, F, K.

¹⁷ Tr. at 48-49, 63-64; AEs A, G.

¹⁸ Tr. at 49-54, 60-63; GE 1; AE A.

¹⁹ Tr. at 23-30, 54-60, 62, 68, 71-76; GE 1.

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. . . .

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 to pay 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; and

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

Since Applicant's financial problems started in 2009, Applicant has made a good-faith effort to resolve her delinquent debts. She resolved SOR ¶¶ 1.a and 1.c to 1.i; she is in the process of paying SOR ¶¶ 1.m and 1.o; and she intends to resolve the remaining SOR debts.

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, she has demonstrated a good-faith effort and has the means to continue to resolve her remaining debts. AG ¶¶ 20(a), 20(b), 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. While Applicant has unresolved SOR debts, 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 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.o:	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