



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 16-02896

Applicant for Security Clearance

Appearances

For Government: Erin Thompson, Esq., Department Counsel

For Applicant: *Pro se*

03/16/2018

Decision

MASON, Paul J., Administrative Judge:

Applicant's underemployment, unemployment, marital problems, and lingering medical condition between 2011 and November 2015, were carefully considered. However, she has been consistently employed since January 2015. The only documentation she presented regarding the listed debts was a printout from her debt consolidation firm displaying action supposedly taken to resolve the listed debts. This print out and other unsupported payment claims does not equate to substantiated proof that any of the listed debts were satisfied. Eligibility for security clearance access is denied.

Statement of the Case

On March 23, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated November 19, 2016, detailing security concerns

raised by financial considerations (Guideline F. The action was taken under Executive Order (E.O.) 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) effective in the DOD on September 1, 2006.

While this case was pending a hearing, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs). The guidelines were applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs. My decision would be the same under the 2006 or 2017 guidelines.

Applicant provided her notarized answer on December 15, 2016. The case was assigned to me on August 14, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 19, 2017, for a hearing on November 7, 2017. The hearing was held as scheduled. The government's seven exhibits (GE) 1-7 and Applicant's six exhibits (AE) A-F were entered into evidence without objection. DOHA received the transcript and the record closed on November 15, 2017.

Findings of Fact

The SOR lists 30 delinquent accounts under the financial considerations guideline. The total amount of delinquent debt is \$35,951. Eighteen debts are medical accounts totaling \$15,049. The remaining 12 debts are commercial and utility accounts totaling \$20,902. The debts became delinquent between September 2009 and May 2015. Several listed debts are over \$2,000. The debts under \$250 are: SOR 1.o (\$100); 1.p (\$50); 1.aa (\$212); 1.bb (\$142); 1.cc (\$133); and 1.dd (\$69). Applicant admitted all allegations, and provided short explanations for accounts identified at SOR 1.b (shared debt with former husband), SOR 1.c (medical insurance should have covered debt),¹ 1.f (uncertain as to identity of debt), 1.t (cell phone dispute), and 1.w (dispute in debt because of premature withdrawal from the school). Applicant indicated that she paid SOR 1.q, 1.v, and 1.dd in December 2016. She indicated that she could not provide payment documentation because she moved her residence many times. (Answer to SOR; AE A; Tr. 16, 40, 44, 89)

Applicant is 28 years old. She divorced in February 2014. She has a three-year-old son born in July 2014. She testified that she graduated from high school and

¹ Applicant changed her answer regarding most of the 18 medical debts by averring that her current debt firm was disputing them because her medical insurance should have paid for the bills when the services were rendered. Her documentation does not provide the status of the medical debts or the response of her previous medical insurance carriers. (AE A; Tr. 38-39)

vocational school. Her March 2012 e-QIP indicates that she attended vocational high school between 2006 and 2008, but did not receive a degree. She joined the Navy in 2010 and received training to become an electronics technician. While working for a defense contractor in November 2013, she became ill during her pregnancy. Her family medical leave expired when she was laid off. She was able to obtain state medical insurance in 2014, which she lost when a defense contractor hired her in January 2015. She worked there until another contractor hired her into an electrician position in September 2015. She was promoted to electronics technician in quality control. Applicant is currently in her first year of college. (Answer to SOR; Tr. 9-17, 54-55)

In an attachment to her answer and at the hearing, Applicant explained the events that led to her financial problems. Her account of the events is unclear at times. She had to leave her home at the age of 18 (2008), and implied that she misused credit cards and was working at several low-paying jobs. Upon returning home in August 2011, after finishing military reserve training, she could not find a job for about six months. She claimed that she received no military pay from the Navy from September 2011 to March 2012. Then, she worked in information technology and electronics. She married in October 2013, and a month later, she became pregnant and very sick. Then, she was laid off for a period. In December 2013, her husband abandoned her and they divorced in February 2014. Her son was born in July 2014. She had sporadic employment until she began working for an employer in January 2015. She moved to her current employer in September 2015. Her medical problems, which started in November 2013 when she became pregnant, lasted until November 2015, when she was discharged from the Navy Reserve due to medical issues that prevented her from completing her military duty. Some months before her December 2016 answer to the SOR, she received advice from a financial advisor and assistance from a debt firm to pay off the listed delinquent debts in three years. The advisor and debt firm helped her formulate and commence a debt consolidation plan that she could not maintain, as the monthly payments were too large, primarily because the SOR 1.a creditor would not accept incremental payments. The debt firm was receiving and holding onto her payments to pay the SOR 1.a account while other accounts remained unpaid. With the help of a roommate, Applicant believed she could pay off the delinquent accounts within three years. She submitted no documentation to bolster her debt consolidation claims. (Answer to SOR; AE A; Tr. 16, 40, 52-54, 73-74)

Applicant has been working with another debt consolidation firm since May or June 2017. She is currently paying them \$100 a month. When asked specifically to explain what the firm was doing, she stated that they were sending out letters to the creditors. If Applicant did not recognize the creditor, the firm would send a letter to them to verify the claim. If she paid the debt, the firm would question why the debt was still posted in the credit report. Applicant recalled a few debts and a garnishment that the firm removed. Applicant's two-page documentation from the firm, dated November 3, 2017, shows 43 creditors with code words in three columns under the three credit agencies. Thirty of the creditors appear in the SOR. Aside from the code words, the documentation does not display proof that the firm was negotiating settlements or

paying any listed or unlisted creditors. For example, as explained by Applicant, “in queue” means that the debt firm was negotiating a settlement with the creditor. However, there is no independent proof that details the status of the settlement. (AE A; Tr. 40, 71-75)

Applicant’s budget was admitted into evidence. Her net monthly income (net monthly pay, plus child support, plus daycare flexible spending account (FSA)), amounts to \$3,714. After payment of all monthly expenses, including her car and car insurance amounting to \$400 a month,² she estimates her net monthly remainder is between \$200 to \$500 a month, depending on emergencies like a dead car battery or her continuing education that her employer will reimburse. (AE F; Tr. 62-70)

Applicant has approximately \$1,000 in her checking account. She has a savings account, but she had to use the savings to move from her flea-infested residence because her son is allergic to insect bites. She applied the savings to pay rent and a security deposit at the new location. She also applied the savings to her rent at her current home that she is about to leave. (Tr. 78-81)

Department Counsel asked Applicant about the significant number of credit inquiries that appear on the last page of her November 2017 credit bureau report. Applicant indicated that she believed that only the car dealer would inquire into her credit since she purchased the dealer’s car. At least 12 of the inquiries occurred in a four-day period between July 15 and July 19, 2017. The inquiries were from other car dealerships and finance companies. Listed with the inquiries is one from a jeweler made in May 2017. When Department Counsel asked why the jeweler inquiry would appear in the credit report, Applicant replied that she was not going to purchase the jewelry. She was simply looking at jewelry from several stores, and did not recognize the one posted in her credit report. She explained that she was planning to marry in 2020 or later. Department Counsel then asked if she was only looking at jewelry, why would the jeweler conduct a credit check. Applicant conceded that she may have consented to one jeweler checking her credit. The credit report does not show Applicant opened a jewelry account. (GE 4 at 6-7; AE B; Tr. 63-66)

Applicant considered filing bankruptcy, but declined because someone told her that she would lose her security clearance. She wants to pay her own debts. She has never had financial counseling. (GE 1 at 32; Tr. 77, 85)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available, reliable

² The cost of the recently purchased car and insurance does not appear in AE F, (Tr. 62, 68)

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Financial Considerations

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. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

When the SOR was issued in November 2016, Applicant owed 30 delinquent debts totaling \$35,951. Eighteen of the 30 accounts are medical debts totaling \$15,951. The other 12 debts are commercial and utility accounts. The debts became delinquent between September 2009 and May 2015. Applicant stated in her answer and at the hearing that she had paid SOR 1.q, 1.v, and 1.dd. She provided no documentation showing that any of the debts were resolved. After the hearing, Applicant still owed \$35,951. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20. Conditions that could mitigate security concerns include:

(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

(e) 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 resolve the issue.

Applicant's debts became delinquent between 2009 and 2015. She provided no documented evidence that shows any of the debts were satisfied. It is likely that her financial problems will persist in the future, continuing to have an adverse impact on her trustworthiness and reliability. AG ¶ 20(a) does not apply.

Applicant's financial problems began when she left her home at the age of 18, and worked in several low-paying jobs. After she returned from military training, she received no military pay between September 2011 and March 2012. In November 2013, she became ill during her pregnancy and she was laid off. Her illness lingered until November 2015. Her husband divorced her in February 2014. She lost her medical insurance until 2014, when she was able to obtain state medical insurance. Applicant receives full credit under the first prong of AG ¶ 20(b).

However, the second prong of AG ¶ 20(b) calls for the individual to act responsibly under the circumstances. Though Applicant claimed that she attempted a debt consolidation before she received the December 2016 SOR, she provided no proof. Paperwork from the advisor or the debt firm showing that she tried but failed to maintain payments under a plan would constitute favorable evidence of her attempt to address her debt delinquencies. Only limited weight can be assigned to Applicant's documentation from her current debt firm. Aside from listing the creditors, the debt firm documentation supplies no insight into whether any of the creditors have been paid or

are being paid under a payment plan. The second prong of AG ¶ 20(b) does not apply because there is no evidence establishing that any listed debt was paid or a listed debt balance was reduced.

AG ¶ 20(c) applies when there is evidence of financial counseling and the debts are under control. Applicant receives limited mitigation based on her participation with the debt consolidation firm in November 2017. She provided no copies of letters that she claimed the firm was sending to the creditors. In addition, there is no verification that the debt firm negotiated a documented settlement with any of the creditors. Her debts are still not under control. AG ¶ 20(b) has only limited application.

AG ¶ 20(d) addresses a good-faith effort to repay overdue creditors. An applicant is not required to establish that he or she has paid every debt listed in the SOR. All that is required is a plan and meaningful action toward consummation of the plan. Applicant's enrollment in the debt firm represents a plan. Because there is no confirming evidence that implements the plan showing that any debts were paid or settled, Applicant receives no mitigation under AG ¶ 20(d).

AG ¶ 20(e) does not apply because Applicant has furnished no documentation supporting her claim that her insurance carriers should have covered the medical claims when the medical services were rendered. Her dispute of the cell phone debt at SOR 1.t and the tuition debt at SOR 1.w lack merit, as there is no independent evidence to explain the basis of her disputes.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 28 years old and divorced with one three-year-old son. She had several unforeseen events occur in her life between 2011 and late 2015. I discussed those events elsewhere in this decision. However, she has been continuously employed

since January 2015. No weight can be given to her unsuccessful participation in the debt consolidation firm in 2016. Only scant weight can be given to her enrollment in her current debt consolidation firm because there is no evidence that any of the delinquent debts were paid or put in a payment plan. To demonstrate her commitment to overcoming her delinquent debts, she could have provided validated evidence of paying the smaller creditors such as SOR 1.o, 1.p, and 1.dd. Considering all the evidence from a common-sense point of view and in light of the whole-person factors, Applicant has not mitigated the security concerns arising from the guideline for financial considerations.

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.dd:	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 security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge