



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 17-00694
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J., Connelley, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on her student loans, two credit cards, and a medical debt because of insufficient income. She has rehabilitated her private student loans and has repaid two of the three consumer delinquencies on her credit record. Her federal student loans were repaid by interception of her income tax refund. She has yet to make any payments on a credit-card debt that was incurred by her mother on their joint account, but Applicant has no new past-due debt. Clearance is granted.

Statement of the Case

On April 17, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue eligibility for access to classified information. The DOD CAF took the action under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On May 1, 2017, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 1, 2017, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The hearing was scheduled for August 3, 2017.

While this case was pending a hearing, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017.¹ Applicant was informed with the Notice of Hearing that the new AG would be considered in her case.

On July 17, 2017, I rescheduled Applicant's hearing for August 2, 2017. I convened the hearing as rescheduled. Department Counsel withdrew the Guideline E allegation. Three Government exhibits (GEs 1, 3-4) and seven Applicant exhibits (AEs A-G) were admitted in evidence without objection. A report of subject interview, which was offered as GE 2, was excluded under ¶ E3.1.20 of the Directive. Applicant and a witness testified, as reflected in a transcript (Tr.) received on August 8, 2017.

I held the record open for one month after the hearing for Applicant to submit additional exhibits. No documents were received by the deadline, and I closed the record on September 2, 2017.

Findings of Fact

The SOR alleges under Guideline F that Applicant owed student loans in collection for \$4,393 (SOR ¶ 1.a); \$2,464 (SOR ¶ 1.c); \$1,115 (SOR ¶ 1.f); and \$702 (SOR ¶ 1.g); a charged-off credit card debt of \$2,778 (SOR ¶ 1.b); and two collection debts of \$463 (SOR ¶ 1.d) and \$191 (SOR ¶ 1.e). Applicant denied the student loan delinquencies in that the account in SOR ¶ 1.a was current, the debt in SOR ¶ 1.c was the same debt as that in SOR ¶ 1.a, and her tax refund of \$1,938 had been applied to resolve the federal student loans in SOR ¶¶ 1.f and 1.g. Applicant denied the credit collection debt in SOR ¶ 1.d and the medical collection debt in SOR ¶ 1.e on the basis that they had been paid. She admitted the retail credit debt in SOR ¶ 1.b, but indicated that she was only a co-signer on her mother's account. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 27-year-old high school graduate with some college credits in a medical assistant's program. She is one semester short of earning her associate's degree.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

She has worked in assembly for a defense contractor since late February 2016. Applicant has never married, but she has a four-year-old daughter. (GE 1; Tr. 43.) Her daughter's father took over daycare for their daughter in approximately July 2017. Applicant and her daughter's father had been alternating paying his sister's mother-in-law \$80 a week to care for their daughter for the past year. (Tr. 66-68.)

Applicant was a full-time commuter college student from September 2008 to April 2011. She paid for her schooling in part with private and federal student loans. In September 2011, she transferred to a community college near her home. In October 2011, Applicant began working full time as a sales associate for a department store. She was unemployed from February 2012 to October 2012, when she began working at a call center. In March 2013, she stopped working because she was pregnant. Following the birth of her daughter in May 2013, Applicant was a stay-at-home mom until August 2015, and she and her daughter lived with her parents. In August 2015, Applicant regained employment as a phone representative at a call center. Applicant began her current employment in February 2016. (GE1; Tr. 41-42.)

On February 10, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She responded negatively to all of the financial record inquiries. (GE 1.) A check of Applicant's credit on February 20, 2016, showed several collection accounts on her credit record. A joint credit card opened in May 2009 was in collection for \$2,778 with no activity since March 2012 (SOR ¶ 1.b). A \$463 credit card debt from April 2014 had been placed for collection in August 2015 (SOR ¶ 1.d). A \$440 wireless telephone debt from August 2013 was in collection (not alleged in SOR). A \$191 medical debt from July 2012 had been in collection since November 2012 (SOR ¶ 1.e). Applicant had opened federal student loans of \$1,750 and \$1,000 in November 2010. She made no payments after October 2014, and, as of January 2016, she owed collection balances of \$1,115 (SOR ¶ 1.f) and \$702 (SOR ¶ 1.g). Two private student loans obtained for \$3,500 (SOR ¶ 1.a) and \$1,806 (SOR ¶ 1.c) in November 2008 had been placed for collection in December 2015. Applicant or her parents had paid off additional educational loans of \$5,595 obtained in November 2008 and \$989 obtained in May 2010.² (GE 3; Tr. 60.)

As of December 2016, the \$440 wireless telephone debt on Applicant's credit record was listed as paid for less than its full balance. She had one federal student loan on her credit record, which was reportedly past due for \$1,170 (SOR ¶ 1.f). The private student loans in SOR ¶¶ 1.a and 1.c were listed as past due for \$4,393 and \$2,464. No progress was reported on the delinquent accounts in SOR ¶¶ 1.b, 1.d, and 1.e. (GE 4.)

Applicant had rehabilitated her student loans in SOR ¶¶ 1.a and 1.c by late January 2017 by paying \$5 a month for nine or ten months. (AE A; Tr. 31-32, 44.) On January 26, 2017, she was advised that the student loans would be placed into a standard repayment plan requiring equal monthly payments of at least \$50 for the life of the loans not to exceed

² Applicant testified that her parents handled her student loan payments about half the time, but also that her parents may also have allowed her student loans to become delinquent without telling her because they did not want to cause her stress. (Tr. 60.)

10 years. (AE A.) As of June 2017, Applicant owed \$6,417 in consolidated student loan debt (SOR ¶¶ 1.a and 1.c). Her loan was rated as current with her first monthly payment of \$72 due on July 22, 2017. Applicant provided a confirmation number as evidence that she made that payment. (AEs E, G; Tr. 33-34.) Applicant maintains that the federal student loans in SOR ¶¶ 1.f and 1.g were paid when \$1,938 of her federal income tax refund was withheld. (Tr. 37, 46-49.) There was no outstanding balance for the federal student loans listed on her credit report as of August 2017. (AE G.)

Applicant took responsibility for paying her own debts. (Tr. 61.) In April 2017, Applicant arranged to settle the \$463 credit card collection debt for \$363. She paid the settlement the same month. (AE D; Tr. 34-35, 50.) The \$191 medical debt from November 2012 (SOR ¶ 1.e), which was for emergency services, was still on her credit record, although she provided a MoneyGram receipt of her payment for the debt. (AEs F-G; Tr. 34.) Applicant provided documentation showing she had paid two additional medical debts of \$191 (not alleged). (AEs B-C; Tr. 35.)

As of August 2017, Applicant has made no progress toward addressing the \$2,778 retail credit delinquency. (AE G.) Applicant had added her name to her mother's account so that Applicant could use her mother's card. Applicant was unaware that her mother had fallen behind on the account. Applicant has made no payments because she learned that the account has been charged off. She believes no payments can be made because the account has been closed. She has been unsuccessful in locating the entity that currently holds the debt, although she indicated that she would again attempt to track down the debt. (Tr. 37, 52-53, 71.) No additional evidence was provided after the hearing regarding this debt.

Applicant's take-home pay is approximately \$890 every two weeks. Applicant and her daughter still live with Applicant's parents. Applicant does not pay rent, but she gives her parents \$250 for household bills. Applicant gives her father an additional \$100 for her share of the phone bill and \$150 for her car insurance. (Tr. 55-56.) As of early August 2017, Applicant had about \$800 in checking account deposits and \$50 in savings deposits. (Tr. 57.) Applicant pays for groceries and clothing for her daughter. (Tr. 58.) Applicant does not have any open credit card accounts. She uses her debit card to avoid any new financial problems. (Tr. 59.) There is no evidence that her daughter's father pays a set amount for child support. When Applicant asks her daughter's father for something, he supplies it. (Tr. 68.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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." 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are articulated 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.

When Applicant answered the SOR allegations, she admitted only the debt in SOR ¶ 1.b, and she indicated she was only a co-signer on that account. The burden is on the Government of proving matters that are controverted. See Directive ¶ E3.1.14. The Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. See, e.g., ISCR Case No. 14-03612 (App. Bd. Aug. 25, 2015). Applicant had defaulted on private and federal student loans (SOR ¶¶ 1.a, 1.c, 1.f, and 1.g). Credit card debts for which Applicant was jointly liable (SOR ¶ 1.b) or individually liable (SOR ¶ 1.d) were placed for collection as was a medical debt (SOR ¶ 1.e). Even assuming as she testified that her parents were handling some of her debt payments for her, Applicant was responsible for ensuring that payments were made on time, and she did not do so. Two disqualifying conditions under AG ¶ 19 apply in this case: AG ¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant has the burden of mitigating the security concerns raised by the delinquent debts. The following conditions under AG ¶ 20 may 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;
- (c) the person has received or is receiving 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.

Available credit information substantiates the debts. Applicant or her parents stopped paying on her student loans in 2014. Her private student loans were in default

status until January 2017. Her federal student loans were satisfied by interception of a portion of her federal income tax refund. Applicant did not pay the debts in SOR ¶¶ 1.d and 1.e until April 2017. Her failure to address her past-due debts before 2016 precludes me from concluding that her financial problems occurred so long ago to qualify for mitigation under AG ¶ 20(a).

AG ¶ 20(b) has some applicability in that Applicant's financial problems were caused by unemployment and underemployment. The salient issue is whether Applicant acted responsibly once she had stable employment. Applicant started the process of rehabilitating her student loans early in 2016. She made arrangements to settle the credit card debt in SOR ¶ 1.d in April 2017. She indicated that the medical collection debt (SOR ¶ 1.e) had been paid. Applicant has yet to make any payments on the \$2,778 credit card delinquency (SOR ¶ 1.b). Whether she was a joint owner or co-signer on the account, she is legally liable for the balance on the account.

AG ¶ 20(c) and AG ¶ 20(d) have some applicability because of her rehabilitation of her private student loans, her settlement of the \$463 credit card delinquency, and her recent payment of the medical collection debt. Satisfaction of her federal student loans by the government taking her income tax refund is not a good-faith effort to repay the loans under AG ¶ 20(d). However, AG ¶ 20(c) is applicable in that her federal student loans have been resolved.

Applicant made some inquiries of the credit lender about the \$2,778 charged-off debt (SOR ¶ 1.b). Those inquiries are not enough to establish either AG ¶ 20(c) or AG ¶ 20(d) without some documentation that the debt is no longer owed. Additionally, AG ¶ 20(e) is not satisfied without some documentation to prove that she had no legal liability on the account.

Appeal Board precedent requires that "a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). In evaluating Guideline F cases, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that the plan provide for payments on all outstanding debts

simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant is not required to pay off all of her SOR debts if she is handling her finances in a manner that shows sound judgment. She paid two medical debts that were not alleged in the SOR. Applicant indicated at her hearing that she would again attempt to determine whether the \$2,778 debt is currently in collections so that she could establish a repayment plan. A promise to pay a delinquent debt in the future, no matter how sincerely made, is not a substitute for having paid the debt. See e.g., ISCR Case No. 14-04565 (App. Bd. Sep. 18, 2015). However, in her favor, Applicant is not taking on any new debt. She appears to have her spending in control. Her latest credit report shows no delinquent debt apart from the \$2,778, which is not likely to be a source of financial pressure for her. Applicant has demonstrated a willingness to resolve her verified debts by rehabilitating her private student loans and satisfying the debts in SOR ¶¶ 1.d and 1.e. She has a stable income from which she can make debt payments. Her financial situation no longer presents an unacceptable security risk.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).³ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

A record of delinquent debt raises some concerns about financial judgment. Applicant showed some irresponsibility by allowing her parents to handle some student loan payments for her without checking to ensure that they were making the payments. Two of her delinquent debts were paid after the SOR was issued, but she is credited with taking steps in 2016 to rehabilitate her private student loans.

While there is a strong presumption against the grant or renewal of a security clearance when there are issues of some security concern,⁴ the relatively small amount of

³ The factors under AG ¶ 2(d) are as follows:

(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.

⁴ See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990).

debt yet to be addressed is not likely to be a source of undue pressure or coercion, especially given that the debt has been charged off by the creditor. After considering the whole-person concept, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

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.g: For Applicant

Paragraph 2, Guideline E: WITHDRAWN

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge