



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-00972
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

07/31/2018

Decision

HOGAN, Erin C., Administrative Judge:

On May 4, 2017, 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006. Security Executive Agent Directive 4 (SEAD 4) approved on December 10, 2016, superceded and amended the previous AG, effective on June 8, 2017. I reviewed both AG. The outcome of this case would have remained the same under either set of guidelines.

On May 24, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 22, 2017. The case was assigned to another administrative judge on December 4, 2017. A hearing convened on February 14, 2018, but was cancelled because Applicant was no longer sponsored for a security clearance. Applicant found another sponsor and the case was reopened and assigned to me on May 3, 2018. A notice of hearing was issued on May 16, 2018, scheduling a new hearing on June 13, 2018. The hearing was held as scheduled. During the hearing, the Government offered four exhibits which were

admitted as Government Exhibits (Gov) 1 – 4. Applicant testified and offered seven exhibits which were admitted as Applicant Exhibits (AE) A – G. The transcript (Tr.) was received on June 21, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a future employee of a DoD contractor seeking to maintain a security clearance. If she receives a security clearance, she will be hired by the DoD contractor. She has worked for her current employer since November 2017. Her current job does not require a security clearance. She served on active duty in the United States Marine Corps from 1998 to 2002. She separated in the rank of Sergeant with an honorable discharge. She has held a security clearance in the past. She has a bachelor's degree. She is twice divorced, and is currently in a cohabitation relationship. She has a son, age 18, and a daughter, age five. Her current partner has a daughter, age 5. (Tr. 19 - 26; Gov 1)

On October 25, 2013, Applicant submitted a security clearance application as part of a periodic reinvestigation. (Gov 1) A subsequent security clearance background investigation resulted in the following SOR allegations: a \$15,790 car loan that was charged off in April 2014 (SOR ¶ 1.a: Gov 2 at 1; Gov 4 at 5); a \$15,538 car loan that was charged off in August 2016 (SOR ¶ 1.b: Gov 2 at 2); a \$2,998 apartment rental debt placed for collection in June 2014 (SOR ¶ 1.c: Gov 2 at 2); a \$2,134 apartment rental debt placed for collection in November 2013 (SOR ¶ 1.d: Gov 2 at 2; Gov 4 at 4); a \$1,202 cell phone account placed for collection in August 2013 (SOR ¶ 1.e: Gov 2 at 2; Gov 4 at 4); and a \$797 cell phone account that was more than 120 days past due as of September 2015. (SOR ¶ 1.f: Gov 2 at 2)

Additional delinquent debts include a \$657 cable television account that was placed for collection in April 2014 (SOR ¶ 1.g: Gov 2 at 2); a \$603 satellite television account placed for collection in 2011 (SOR ¶ 1.h: Gov 5 at 3); a \$500 apartment debt placed for collection in June 2014 (SOR ¶ 1.i: Gov 2 at 2); a \$150 medical debt that became delinquent in December 2013 (SOR ¶ 1.j: Gov 2 at 2); a \$7,014 federal tax lien entered against Applicant in tax year 2010 (SOR ¶ 1.k: Gov 2 at 4; Gov 4 at 3); and a \$26,676 tax lien filed against Applicant for tax year 2013 (SOR ¶ 1.l: Gov 2 at 4; Gov 3; Gov 4 at 3).

From May 2009 to April 2011, Applicant worked for a contractor overseas. She earned approximately \$94,000 annually. When she returned to the U.S., she worked for another contractor from May 2011 to May 2013. A new contractor was awarded the contract in June 2013. She continued in the same position with the new contractor from June 2013 to June 2016. She earned approximately \$113,000 annually. In June 2016, the security office received notice of a financial issue and laid off Applicant. She was unemployed from June 2016 to November 2016. (Tr. 26-29, 49-50)

Between November 2016 and June 2017, she was employed part-time at a job which paid her \$11 an hour. She trained to be security officer for five weeks without pay. She worked a part-time job at a retail store at night. In November 2017, she received full-time employment as a data technician at an hourly wage of \$21. After her deductions and child support her monthly take home pay is \$1,750. Her current sponsor will hire her full-time at an annual salary of \$56,000 if she receives a security clearance. She is actively looking for better employment activities. She will be able to pay her debts once she receives a security clearance and gets a better paying job. (Tr. 30-33)

All of her delinquent debts were incurred before she was laid off in June 2016. She has had difficulty paying the debts because of unemployment and under employment. Her second spouse incurred a lot of debt without Applicant's knowledge. This led to Applicant filing for divorce in 2015. Their divorce was final in 2017. (Response to SOR; Gov 2-4)

The current status of the debts alleged in the SOR are:

SOR ¶ 1.a: \$15,790 charged-off account owed after a voluntary car repossession: In her response to the SOR, Applicant indicated she was going to offer to pay \$20 a month towards this account. She purchased the car in 2010. She could not afford the payments and turned the car into the dealer. She has not made any payments towards the debt. She claims the debt is no longer listed on her credit report because it is more than seven years old. (Tr. 34-35)

SOR ¶ 1.b: \$15,538 charged-off car loan: Applicant purchased this car in 2015. Someone co-signed the car loan because she had bad credit. She got behind in making payments while in the process of her second divorce. Her ex-wife wanted the car and agreed to make the payments. Her ex-wife made the payments for several months, but then dropped the car off in front of Applicant's home. Applicant could not afford to make the payments because she lost her job so she turned the car into the dealer. In May 2018, she offered to pay \$20 a month on this debt, but the lender told her they wanted a higher payment. Applicant is unable to make payments on this debt. (Tr. 36-39)

SOR ¶¶ 1.c and 1.i: \$2,998 and \$500 owed to an apartment complex: Applicant testified that she gave the apartment complex 60 days notice that she was moving out of the apartment as required in the lease agreement and that the apartment complex improperly charged her an additional month's rent. She has been paying \$20 a month towards this debt since December 2017. She missed a payment in May. She did not provide documentation that she was making payments. (Tr. 39-41)

SOR ¶ 1.d: \$2,134 debt owed to an apartment complex: Applicant broke her lease early because she was in a bad relationship. She moved out in December 2011 or early 2012. She intends to pay \$20 a month towards this debt. She had no repayment agreement and had not made any payments towards this debt. (Tr. 41-42)

SOR ¶ 1.e: \$1,202 cell phone account placed for collection: In July 2017, Applicant agreed to pay \$25 a month towards this debt. She has not made a payment since March 2018. She believes this debt arose from her ex-wife purchasing a cell phone account and plan without Applicant's knowledge. (Tr. 43-44)

SOR ¶ 1.f: \$797 cell phone account that was more than 120 days delinquent as of February 2017. Applicant intended to pay \$10 a month towards this debt. She has been unable to work out a payment plan with the debtor. (Response to SOR; Tr. 45)

SOR ¶ 1.g: \$657 cable television account placed for collection: In her response to the SOR, Applicant admits to the debt and planned to pay \$5 per month until it was paid in full. She hoped to resolve the debt by January 2018. During the hearing, Applicant claimed that her ex-wife opened the account in Applicant's name without Applicant being aware of it. The account is unresolved. (Response to SOR; Tr. 45-46)

SOR ¶ 1.h: \$603 satellite television account: In response to the SOR, Applicant admitted to the debt and planned to pay \$5 a month towards this debt. Applicant testified that the debt is for equipment that Applicant did not return when she abruptly broke her apartment lease in 2012. No payments have been made on this debt. (Response to SOR; Tr. 47)

SOR ¶ 1.j: \$150 medical debt placed for collection: Applicant believes that she paid this debt. She did not provide proof that the debt was paid. (Tr. 48)

SOR ¶ 1.k: \$7,014 federal tax lien entered against Applicant in 2010: Applicant believed this was a state tax debt owed for personal property taxes in 2009. She is paying \$20 a month towards that debt. The record evidence indicates it is a federal tax debt. The status of the debt is unknown. (Response to SOR; Tr. 49-50)

SOR ¶ 1.l: \$26,676 federal tax lien entered against Applicant in 2013. In her response to the SOR, Applicant said this was a consolidation of debt owed for tax years 2008 through 2010. She originally had a payment plan with the Internal Revenue Service (IRS) for \$200 a month in 2011. She made payments for about a year and then defaulted on the payment plan. The IRS would not let her enter into another payment plan. She has not been able to make payments towards this debt. During the hearing, she claimed this federal tax debt arose as a result of earning significantly more income while working overseas and following the advice of the contractor she worked for as to how many exemptions to claim. She could not afford to pay the tax debt. (Response to SOR; Tr. 49-54)

Currently, Applicant lives "paycheck to paycheck." She has no savings. She testified that if she gets her security clearance back, she would be able to earn enough income to pay her debts. She has not attended formal financial counseling. She received advice from a friend who was a financial officer in the U.S. Navy. She has also watched YouTube videos on how to deal with debt. (Tr. 56-63)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful 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 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 access 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 as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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).

GUIDELINE F: Financial Considerations

The security concern relating to the guideline 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) 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 encountered financial problems since at least 2010 when a \$7,014 tax lien was filed against her. The total tax debt owed to the federal government is \$33,690. The SOR alleged two voluntary automobile possessions which totaled \$31,328. Her remaining debts include \$5,632 related to two broken apartment leases, and \$3,409 in consumer debt. The total amount of the delinquent debt is over \$74,000. AG ¶¶ 19(a), 19(b), 19(c), and 19(d) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk

inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

With regard to Applicant's federal tax debts, the emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant's failure to timely file and pay taxes); See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially 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 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.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. None of the debts alleged in the SOR have been resolved.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by her divorces, as well as her unemployment and underemployment between June 2016 to the present. These circumstances were beyond Applicant's control and adversely affected her ability to pay her bills. However, this mitigating condition is given less weight because Applicant incurred most of the debt when she was earning a high income as a contractor overseas and in the years following her return from overseas before being laid off. Circumstances beyond her control affected her ability to pay off her debts. However, it does not explain her inability to pay or enter into agreements to pay her federal income tax debts and other debts that became delinquent before she was laid off. I cannot conclude Applicant acted responsibly under the circumstances because she has not been proactive in resolving her debts over a long period of time. Many of the debts were ignored for years. While her unemployment and underemployment affected Applicant's ability to repay her debts, she has a history of financial irresponsibility going back several years. For this reason AG ¶ 20(b) is given less weight.

AG ¶ 20(c) does not apply. Applicant did not take a formal financial counseling course. Her debts remain unresolved.

AG ¶ 20(d) does not apply because Applicant has not demonstrated a good-faith effort to resolve her delinquent debts. While Applicant intends to pay her debts in the future if she is granted a security clearance, a promise to pay in the future is not sufficient to mitigate security concerns raised under the financial considerations.

AG ¶ 20(g) does not apply because Applicant's federal tax debts remain outstanding.

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 the 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 considered Applicant's service in the United States Marine Corps and her work as a federal contractor. I considered Applicant's unemployment and underemployment between June 2016 and the present. I considered Applicant's claims that her ex-wife incurred several debts without her knowledge. However, Applicant incurred most of the debts alleged in the SOR to include the substantial federal income tax debt. Most of her delinquent debts were accumulated years before she encountered unemployment and underemployment. Security concerns under financial considerations are not mitigated.

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.l	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 to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge