



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



In the matter of:)
)
) ISCR Case No. 17-01330
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

04/26/2018

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 May 16, 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 (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 June 16, 2017, and requested a hearing before an administrative judge. The case was assigned to me on January 17, 2018. 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 January 26, 2018, scheduling the hearing for February 21, 2018. I convened the hearing as scheduled.

The Government's exhibit list and discovery letter, and Applicant's exhibit list, were appended to the record as Hearing Exhibits (HE) I, II, and III, respectively. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through N, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until March 7, 2018. She timely provided additional documentation, which I marked as AE O and P and admitted in evidence without objection. I appended to the record as HE IV an email from Department Counsel indicating she did not have any objection to AE O and P. DOHA received the hearing transcript (Tr.) on February 28, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. She is 48 years old. She married in 1994, separated in mid-2009, and divorced in October 2011. She has fraternal twin children from the marriage, both of whom are adults. She graduated from high school in 1987, and she subsequently attended college for two years but did not earn a degree.²

Just shy of his third birthday in 2000, Applicant's son was diagnosed with autism and attention deficit hyperactivity disorder. Six months later, Applicant resigned from work and became a stay-at-home mom. She did not work outside of the home for 13 years, though she contributed to her ex-husband's successful business during this period. In April 2013, she worked for a temporary company. In July 2013, she was offered a permanent position as a branch administrator for her current employer, a defense contractor. She was also granted a DOD security clearance for the first time. In January 2018, she was promoted to managing executive administrator. She requires a clearance for her job.³

The SOR alleges a May 2014 state tax lien of \$2,323, a delinquent mortgage of \$16,105, and six delinquent consumer debts for \$25,754. The SOR allegations are established by Applicant's admissions and credit reports from September 2016 and April 2017. Applicant also listed and discussed her delinquent debts in her 2014 security clearance application (SCA) and during her 2015 background interviews.⁴

Applicant attributes her delinquent debts to her tumultuous divorce. At the time of the divorce, the value of her ex-husband's business was assessed at \$4.5 to \$5 million.

² Response to the SOR; Tr. at 8-9, 28-31; GE 1-2.

³ Tr. at 6, 8-9, 37-39, 48-49, 53-54; GE 1-2.

⁴ GE 1-4.

He was ordered to pay child support, alimony, medical insurance for their children, and her daughter's high-school tuition. He fought the court order over a two-year period, and he was also consistently non-compliant or delinquent on his support payments. As a result, in around February 2016, several months prior to her daughter's high-school graduation, school officials informed Applicant of a \$15,000 balance in unpaid tuition that needed to be paid in order for her daughter to graduate. Applicant and her mother pooled their resources to resolve the delinquent account.⁵

In 2016, Applicant cosigned \$20,000 in student loans with her daughter, to supplement her daughter's scholarships for her college education. The loans are on a deferred payment plan until at least 2020. Since age four and as of early 2017, her son attended, during the week, a private high school, fully subsidized by the county in which Applicant lives, and he came home on the weekends. He was expected to graduate from high school in March 2019, at age 21. He also had a part-time job. After his graduation, Applicant hoped that he would transfer into a full-day work program. As he will never be able to live independently, he would return to live with Applicant full time. She did not foresee that this transition would cause a financial burden.⁶

Applicant had not received any money from her ex-husband since May 2017. After he failed to appear at the latest child support hearing in August 2017, Applicant learned from her ex-in-laws that he developed an alcohol and prescription pill addiction. She also discovered that he lost his business; he incurred serious federal tax issues; and he left the state without informing her, their children, or the state child support administration (CSA). The CSA consequently suspended his driver's license and passport, flagged his taxes, and have since attempted to locate him. As of the hearing, he was \$237,951 in child support arrears.⁷

SOR ¶ 1.a is for a May 2014 state tax lien of \$2,323 for unpaid taxes for tax years 2012 to 2015. Since she had not started working until 2013, she attributed the unpaid taxes from tax year 2012 to her ex-husband's failure to pay their taxes. She testified that her \$6,000 refund from tax year 2013 was applied to outstanding taxes for tax year 2011, that her ex-husband also failed to pay.⁸

In June 2017, Applicant entered into a payment plan with the state tax authority to resolve the lien. The plan provided for monthly payments of \$296 for 37 months. She provided documentation to show that she made timely payments of \$296 monthly in July and August 2017. She thereafter had trouble making the full payment, because of the delay in her mortgage modification, though she continued to pay what she could. Her documentation showed that she made consistent monthly payments of \$150 to \$200 from September 2017 to March 2018. Between July 2017 and March 2018, she

⁵ Tr. at 28-31, 54-59; GE 1-2; AE C-F, G-I.

⁶ Tr. at 28-31, 54-59, 71-74; AE C-F, G-I.

⁷ Tr. at 28-38, 40, 47-49; AE C-J, M.

⁸ Tr. at 41-43, 61-65; AE B, O.

paid \$1,867 towards the lien. She intended to consult with the state tax authority to discuss lowering her monthly payment amount, while continuing to make payments, until she resolved the remaining balance on the lien. She did not have any other outstanding taxes, and she timely filed her state and federal income tax returns.⁹

SOR ¶ 1.b is for a \$5,500 debt to a prior landlord that was referred to collection. Applicant intends to resolve this debt through the assistance of a debt relief company. Though she initially contacted the company in the summer of 2017, she wanted to ensure she had money available to pay them. As such, she did not enter into an agreement with them until just before the hearing, after she was approved for a trial mortgage modification, as discussed below. She is scheduled to pay the debt relief company \$128 biweekly through automatic payment deductions, and she expected to resolve SOR ¶ 1.b, as well as SOR ¶¶ 1.e, 1.g, and 1.h discussed below, within at least 27 months.¹⁰

SOR ¶ 1.c is for a delinquent gas and electric bill for \$151. Applicant testified that she paid this bill and she still had the same gas and electric account, for which she was current. She testified that she was current on all of her household utility bills.¹¹

SOR ¶ 1.d is for a charged-off auto account of \$16,429, for a car that was repossessed in August 2016. Applicant testified that she negotiated with the creditor, made a \$900 lump sum payment to retrieve the car, and has since been current on her monthly car payments of \$447.¹²

SOR ¶¶ 1.e, 1.g, and 1.h are for delinquent credit card debts of \$2,386, \$975, and \$313 respectively. Applicant testified that she intended to resolve these debts through the debt relief company, as discussed above.¹³

SOR ¶ 1.f is for a delinquent mortgage of \$16,105, on a total loan balance of \$412,770, for a home she purchased in January 2016. Prior to purchasing the home, she had been renting at \$2,300 monthly. With the then-steady payments she had been receiving from her ex-husband, along with her monthly income, she decided to purchase a home. She was unaware then about her ex-husband's tax issues. In March 2017, she sought a mortgage modification based on her hardship circumstances. She continued to pay what she could towards her mortgage while the modification request was pending. She was approved in late January 2018 for a three-month trial period, to pay \$2,374 monthly from March through May, after which time her mortgage would be modified. She provided documentation to show that she made her first trial payment in

⁹ Tr. at 41-43, 61-65; AE B, O.

¹⁰ Tr. at 43-45, 65-66, 70-71; GE 2; AE A, K.

¹¹ Tr. at 49-50.

¹² Tr. at 50-51, 68-69.

¹³ Tr. at 51-52, 64-65, 69-70; GE 2; AE K.

March 2018, in accordance with the trial plan. She intended to make the remaining two trial payments and thereafter remain current on her mortgage.¹⁴

Applicant's annual salary as of the hearing was \$66,700, as she received a raise one month before the hearing. Prior to the raise, she earned around \$62,500 annually. She received \$665 monthly in Social Security disability benefits for her son. She did not receive financial counseling, but she developed a budget with the debt relief company's assistance. She cut down on unnecessary expenses and made adjustments to account for the money she was not receiving from her ex-husband, due to his failure to abide by the court order. She was repaying her mother the money she lent to assist with her daughter's high-school tuition. She was also looking for a part-time job to supplement her income. She contributed to a 401(k) savings account. She did not have any other delinquent debts.¹⁵

A coworker and friend of Applicant since 2011 testified that she takes her job seriously. He stated that she is very conscientious and she has successful work habits. Numerous character references attested to her strong ethics, integrity, honesty, and trustworthiness. In addition to her pay raise, she has received monetary awards from her employer in recognition of her contributions.¹⁶

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.

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."

¹⁴ Tr. at 42-48, 67-68; AE C, G, L, P.

¹⁵ Tr. at 39-42, 44, 50, 52-61, 66, 70-71, 80-81; GE 2; AE K, N.

¹⁶ Tr. at 74-80; AE A, N.

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;
- (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 taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(b), 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;

(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;

(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's financial problems stemmed from her 2011 divorce, and she has acted responsibly in addressing them. After 13 years of being a stay-at-home mom so that she could care for her son, she obtained employment in 2013 and performed in such a manner that her employer has seen fit to reward her. When she filed her taxes for tax year 2013, her refund of \$6,600 was applied to outstanding taxes from tax year 2011 that her ex-husband failed to pay. She entered in a payment plan in June 2017 to pay the tax lien in SOR ¶ 1.a that stemmed, in part, from unpaid taxes for 2012 that her ex-husband also failed to pay. She entered into a payment plan and paid \$1,867 towards the lien. She intended to continue to make payments until the remaining balance on the lien was resolved.

Applicant sought a mortgage modification in March 2017 to resolve her delinquent mortgage in SOR ¶ 1.f. She made the first trial payment in March 2018, and she intended to make the remaining two trial payments and thereafter remain current on her mortgage. She credibly testified that she negotiated with the creditor for SOR ¶ 1.b, made a \$900 lump sum payment to retrieve her car, and has since been current on her car payments. She also credibly testified that she paid SOR ¶ 1.c and has since remained current on her utility bills.

Applicant contacted a debt relief company in the summer of 2017 to resolve SOR ¶¶ 1.b, 1.e, 1.g, and 1.h. She did not enter into an agreement with them until just before the hearing, because her mortgage modification request was pending and she wanted to ensure that she had money available to pay them. She is scheduled to pay the company \$128 biweekly through automatic payment deductions, and she expected to resolve these debts within at least 27 months.¹⁷

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. She resolved SOR ¶¶ 1.c and 1.d, was in the process of resolving SOR ¶¶ 1.a and 1.f, and had a plan in place to resolve SOR ¶¶ 1.b, 1.e, 1.g, and 1.h. While she has unresolved SOR debts remaining, she has demonstrated a good-faith effort and she has the means to continue to resolve them. AG ¶¶ 20(a), 20(b), 20(d), and 20(g) 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. Applicant resolved a majority of her debts. While she has unresolved SOR debts remaining, she credibly testified at hearing and there is sufficient evidence to show that she is committed to resolving them.

¹⁷ Tr. at 43-45, 65-66, 70-71; GE 2; AE A, K.

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:

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| Paragraph 1, Guideline F: | For Applicant |
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| Subparagraphs 1.a - 1.h: | For Applicant |
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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