



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 17-03031
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esquire, Department Counsel
For Applicant: *Pro se*

02/28/2018

Decision

HOGAN, Erin C., Administrative Judge:

On September 22, 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 June 8, 2017.

On October 5, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 27, 2017. The case was assigned to me on February 9, 2018. Applicant requested that her hearing be expedited. On February 12, 2018, a Notice of Hearing was issued, scheduling the hearing for February 14, 2018. Applicant agreed to waive the 15 day notice requirement. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6, and one demonstrative exhibit which is marked as Hearing Exhibit 1. Applicant testified and offered 12 exhibits which were admitted as Applicant Exhibits (AE) A – L. The record was held open until February 21, 2018, to allow Applicant to submit

additional documents. She timely provided additional documents which were admitted as AE M, without objection. The transcript (Tr.) was received on February 23, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 41-year-old employee of a Department of Defense contractor seeking to maintain a security clearance. She has worked for her current employer since November 2015. She has a high school diploma and some college credit. She is married and has two daughters, ages 20 and 5, and a stepdaughter, age 19. (Tr. 2, 37; Gov 1; Gov 3)

Applicant submitted a security clearance application on October 7, 2015. A subsequent background investigation revealed that she had the following delinquent debts: four past due delinquent student loan accounts (SOR ¶¶ 1.a – 1.d: Gov 5 at 2); two private student loan accounts placed for collection in the amounts of \$4,423 and \$2,617 (SOR ¶¶ 1.e and 1.f: Gov 4 at 7; Gov 5 at 2); a \$1,745 charged-off credit card account (SOR ¶ 1.g: Gov 5 at 2); a \$95 delinquent medical account name of creditor is unknown (SOR ¶ 1.h: Gov 5 at 3); and a \$16 charged-off department store medical account. (SOR ¶ 1.i: Gov 4 at 6; Gov 5 at 3)

Additional delinquent accounts include: a \$2,461 charged-off account (SOR ¶ 1.j: Gov 4 at 3; Gov 6 at 3); a \$307 medical account placed for collection (SOR ¶ 1.k: Gov 6 at 12); a \$294 medical account placed for collection (SOR ¶ 1.l: Gov 6 at 13); a \$200 traffic ticket placed for collection (SOR ¶ 1.m: Gov 6 at 13); a \$166 medical account placed for collection (SOR ¶ 1.n: Gov 6 at 13); a \$36 medical account with an unknown creditor placed for collection (SOR ¶ 1.o: Gov 6 at 14); a \$3,643.85 federal tax debt for 2015 (SOR ¶ 1.p: Gov 2 at 7, 14); and it is alleged Applicant failed to timely file her state income tax return for tax year 2016. (SOR ¶ 1.q: Gov 2 at 9-13, 19-20)

Applicant encountered financial problems while attempting to pay her daughter's college tuition. Some bills were overlooked. Applicant also had some medical issues within the past few years. Her husband did not withhold enough money from his taxes, so they owed money at the end of the year. They are now current on tax filings and are making payments towards the taxes owed. Applicant's finances are improving. Her daughter transferred to a community college. Her daughter is working so she is taking responsibility for her cell phone. She will also make her car loan payment. Applicant will still pay her car insurance. (Tr. 48, 63, 67-70)

Applicant's monthly take home pay is approximately \$6,000. She estimates her total monthly expenses to be \$4,700. She has approximately \$1,300 at the end of each month. She deposits \$1,000 in savings. She withdraws approximately \$300 from savings each month for groceries, so approximately \$700 is set aside for savings each month. Her husband earns about \$62,000 annually. He pays for his car, car insurance,

time share, life insurance and his own expenses. Applicant pays most of the household bills. (Tr. 53-58; 68-69)

The status of the SOR debts are:

SOR ¶¶ 1.a-1.d: Past due student loan accounts, total amount past due \$934, a balance of \$28,551: Applicant entered into a repayment agreement and applied for a forbearance. The forbearance is in effect until November 8, 2018. (Tr.40-41; AE A; AE M at 3)

SOR ¶¶ 1.e, 1.f: two private student loan accounts placed for collection in the amounts of \$4,423 and \$2,617: Applicant entered into a repayment plan in July 2017. She agreed to pay \$5 a month. She is making the agreed upon payments. (Tr. 42-43; AE B; AE M at 12-15; Answer to SOR)

SOR ¶ 1.g: \$1,745 charged-off credit card account: Applicant entered in a payment plan. She agreed to pay \$134.25 monthly. She has provided proof that she is making the monthly payments. As of February 2018, the balance on the account is \$671.25. (Tr. 44-45; AE C)

SOR ¶ 1.h: \$95 delinquent medical account, creditor unknown: Applicant denies this debt. She does not recognize it and it is no longer on her credit reports. I find the pleading was insufficient and find for Applicant. (Tr. 45; Answer to SOR)

SOR ¶ 1.i: \$16 charged-off medical account: Applicant paid this debt. (Tr. 45; AE D)

SOR ¶ 1.j: \$2,461 charged-off account: Applicant paid this debt. (Tr. 45; AE E)

SOR ¶ 1.k: \$307 medical account placed for collection: Applicant paid this debt. (Tr.47; AE F)

SOR ¶ 1.l: \$294 medical account placed for collection: Applicant paid this debt. (Tr. 48; AE G)

SOR ¶ 1.m: \$200 traffic ticket account placed for collection: Applicant paid this debt. (Tr. 49; AE H)

SOR ¶ 1.n: \$166 medical account placed for collection: Applicant paid this debt. (Tr. 50; AE I)

SOR ¶ 1.o: \$36 delinquent medical account, unknown creditor: Applicant denies this debt. She does not recognize it and it is not on her most recent credit reports. I find the pleading was insufficient because it failed to identify the creditor. I find for the Applicant. (Tr. 50; Answer to SOR)

SOR ¶ 1.p: \$3,643.85, delinquent federal tax debt for tax year 2015: In August 2017, Applicant entered into an installment agreement with the IRS. She agreed to pay \$255 monthly via direct deposit. It is noted that the total amount of the federal tax debt is \$14,871 for tax years 2013, 2014 and 2015. (Tr.62-64; AE J)

SOR ¶ 1.q: Applicant allegedly failed to file a state income return for tax year 2016: Applicant requested and received an extension to file her state income tax return. The state income tax return has been filed. Applicant received a refund. (Tr. 64; AE K)

The most recent credit report, dated February 13, 2018, listed three additional delinquent debts that were not alleged in the SOR. There were two automobile loans that were past due in the amounts of \$496 and \$612. Payments were made towards these accounts on February 13, 2018, and February 15, 2018. Both automobile loans are now current. (Tr. at 70; AE L) There was a cell phone account which was past due in the amount of \$1,484. Applicant was not sure what this account was for during the hearing. The record was held open and she researched the account. She discovered it was valid and she entered into a settlement agreement on February 15, 2018. She agreed to make two payments – a \$500 payment on February 22, 2018, and an \$814.75 payment on March 8, 2018, to settle the account in full. (Tr. 71; AE M at 4)

The delinquent debts not alleged in the SOR as well as the federal tax debts incurred for tax years 2013 and 2014 will not be considered as matters of disqualification. The DOHA Appeal Board has stated that conduct not alleged in the SOR may be considered to assess Applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether Applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) I will consider the unalleged conduct in Applicant's case accordingly.

Whole-Person Factors

Applicant's team manager writes that Applicant began working in mid-2015 at a period when major transitions were happening in the office. She quickly became known as the subject matter expert for the new procedures. He describes Applicant as a person of good moral character who cares about the customer and producing a sound, cohesive product. In her personal life, she cares for a mother who has Alzheimer's. She is a good mother/stepmother to her toddler and college-age daughters. Applicant's experience and skills are of great value to the team. (AE M at 5) Other co-workers and friends have said similar favorable things about Applicant. (AE M at 6-7, 10-11)

Applicant's pastor states that Applicant has been a member in good standing for 15 years. She serves as a Youth Leader and Elder. Her pastor finds her honest, trustworthy, committed, and plays an integral part in nurturing and teaching the inherent power of the gospel message. Applicant is a team player who readily offers assistance to support and aid in the growth and development of healthy families. (AE M at 8)

Applicant's husband has known his wife for 16 years. They have three children, two from each other's previous relationships and one with each other. He states his wife has a strong sense of responsibility. He states his wife is not a threat to national security. She would not lie, cheat, or steal. She is a good person of moral character and integrity. (AE M at 9)

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 adjudicative guidelines 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 over arching 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).

Analysis

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;
- (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 over the past few years. While funding her daughter's college education, she struggled to pay her own student loans and incurred additional delinquent debts, to include a 2015 federal income tax debt. The total amount of the delinquencies alleged in the SOR include \$7,974 in delinquent student loan debt, \$4,895 regular delinquent accounts and a \$3,643 federal income tax debt for tax year 2015. AG ¶¶ 19(a), 19(c), and 19(f) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her 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 her 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 her finances in such a way as to meet her financial obligations.

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;

(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) and 20(b) apply because Applicant's debts were the result of an adjustment period for attempting to pay Applicant's daughter's college tuition while maintaining all of the remaining bills. Applicant also had some medical issues which created some unplanned expenses. Applicant is diligently working on resolving all the delinquent debts and is acting responsibly under the circumstances. Applicant's past financial issues do not cast doubt on her reliability, trustworthiness, or good judgment.

AG ¶ 20(d) applies because Applicant is making a good-faith effort to resolve her delinquent debts. She provided proof that she resolved the debts alleged in SOR ¶¶ 1.i

– 1.n. Her federal student loans are in forbearance until November 2018. She entered into and is following a repayment agreement with respect to the private student loans alleged in SOR ¶¶ 1.e and 1.f. She is also making payments with regard to the debt alleged in SOR ¶ 1.g and has entered into an installment agreement regarding the federal income tax debt for tax year 2015. Applicant put forth and is adhering to a good-faith effort to resolve her delinquent debts.

AG ¶ 20(g) applies because Applicant entered into a repayment plan with the IRS regarding the 2015 personal income tax debt alleged in SOR ¶ 1.p. She also filed her 2016 state income tax return alleged in SOR ¶ 1.q. It is noted that the state taxes were not late, an extension was granted for Applicant to file her 2016 state income tax returns. She received a refund from the state in 2016.

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 favorable employment history as a defense contractor. I considered that Applicant and her husband support three children, two of whom are in college. While Applicant encountered some financial problems over the past several years, she has taken steps to improve her financial situation. She has either paid or entered into repayment agreements with her creditors. Her federal student loans are in forbearance until November 2018. Applicant resolved most of the debts and is making payment plans towards her remaining debts. While she is still in the process of resolving some of her debts, she demonstrated that she is committed to resolving her delinquent accounts. Security concerns under financial considerations are mitigated.

Applicant is encouraged to seek out financial counseling from a credible financial counselor. This will help her with establishing a plan to remain financially stable in the future. Applicant is warned that future financial problems may result in the revocation of Applicant's security clearance.

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.h:	For Applicant
-------------------------	---------------

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge