



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-03762
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

07/26/2018

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the security concerns about her financial problems. Eligibility for access to classified information is granted.

Statement of the Case

On November 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).¹ Applicant responded to the SOR on December 7, 2017, and she elected a determination with a hearing. On May 31, 2018, a notice of hearing was issued, scheduling the hearing for June 13, 2018. The hearing proceeded as scheduled. Applicant testified and submitted two documents, which I admitted as Applicant Exhibits (AE) A and B, without objection. Department Counsel submitted four documents, which I admitted as Government Exhibits (GE) 1 through 4, without objection. After the hearing,

¹ The action was taken 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 implemented by the DOD on June 8, 2017.

Applicant timely submitted 20 documents, which I admitted as AE C through V, without objection. DOHA received the transcript on July 6, 2018.

Findings of Fact

The SOR alleges financial considerations security concerns based on Applicant's 15 delinquent debts. In her response to the SOR, Applicant admitted five debts (SOR ¶¶ 1.a.-1.e.), and she denied the remaining 10 debts. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 45 years old. Applicant began working for a DOD contractor in 1992. From 2006 to 2008, she attended vocational school, but she did not earn a degree. In October 2008, she moved to a different state and was briefly unemployed until January 2009. In January 2009, the previous DOD contractor rehired her at her new location. In 2014, Applicant was on medical leave, receiving a reduced income for about three to four months. In 2017, she received a promotion and a substantial raise (\$15,000). Applicant married in 2004 and divorced in 2005. She has lived with her fiancé for about two years. Her children, ages 23 and 26, both serve on active duty in the U.S. Army.²

Applicant's admissions, the April 2015 credit report, and the November 2017 credit report established the 15 debts, totaling approximately \$20,800. These debts became delinquent between October 2008 and October 2015.³

From 2009 to 2014, Applicant made monthly payments on her four student-loan accounts (SOR ¶¶ 1.b.-1.e.), until the automatic withdrawals unexpectedly ceased, without her awareness, in 2014.⁴ Applicant later unsuccessfully sought to reinstate the automatic withdrawals. In April 2018, Applicant obtained a loan from her 401k account. She paid \$7,100 to resolve three student loans (SOR ¶¶ 1.b.-1.d.), and settled a fourth loan (SOR ¶ 1.e.) for approximately \$2,000. A portion (\$3,700) of her tax year 2017 federal income tax refund was applied to the delinquent student loans. All four loans are paid, and Applicant has initiated and adhered to monthly payments to resolve the remaining two, unalleged student loans.⁵

Applicant attributed her financial problems to a brief period of unemployment following her October 2008 relocation and her sister's drug addiction. In about 2000, Applicant's twin sister – who has a nearly identical Social Security number – became addicted to illegal drugs. At their mother's request, Applicant took custody of her sister's children and financial supported them for an extended time. From about 2000 to 2008, Applicant's sister sporadically resided with Applicant and had access to her financial

² GE 1; GE 2; Tr. 23-27, 30, 36.

³ Answer; GE 3-4.

⁴ Although Applicant did not identify the concurrence of her medical leave and the cessation of her automatic withdrawals, it is possible these events were linked.

⁵ Tr. 54-59.

information. Applicant and her sister became estranged due to her sister's addiction issues, false accusations to police, and fraudulent activities targeting Applicant's financial information.

Prior to her February 2015 security interview, Applicant had been aware of only her delinquent student loans. Shortly after the interview, Applicant filed disputes (SOR ¶¶ 1.f., 1.h., 1.k., 1.l., 1.m., and 1.o.) with the credit bureaus for debts she did not recognize. She believed the unfamiliar accounts may have been fraudulently opened or used by her sister. In 2008, she had reported one credit card stolen (SOR ¶ 1.h.) and believed it had been used by her sister. Given their similar names, Social Security numbers, birthdates, and addresses, Applicant explained that her sister's financial and personal information often are comingled with her own. Notably, all six disputed debts became delinquent in about 2008 when Applicant's sister lived with Applicant. The DOD contractor conducted its own pre-employment background investigation, and the investigatory results show the sister's criminal record comingled with Applicant's background information.⁶

Notwithstanding the legitimate nature of her disputes, Applicant sought to resolve the alleged debts. Three debts were resolved through payment (SOR ¶¶ 1.g. and 1.m.) and garnishment (SOR ¶ 1.n.), respectively. Two creditors (SOR ¶¶ 1.k. and 1.m.) notified Applicant by phone that the alleged accounts had zero balances.⁷ Applicant was unsuccessful in identifying the creditors for three alleged debts (SOR ¶¶ 1.a., 1.i., and, and she is willing and able to resolve these debts once they have been established. I found Applicant's testimony about her contacts with creditors, the status of the debts, and her disputes to be credible. Her testimony was consistent with and largely corroborated by the documentary evidence.⁸

Applicant disputed the unpaid judgment (SOR ¶ 1.o.) owed to a former landlord, and she repeatedly contacted this creditor to obtain the basis for the debt. She did not contest the judgment when filed because she did not receive any notices. Although she disputed the validity of debt, she is willing and able to pay this judgment as soon as the landlord responds to her queries for information about the debt.⁹

Applicant and her fiancé divide their household expenses. After expenses, Applicant's monthly net remainder is approximately \$1,000, which she uses to reduce any credit card balances. She has been current on monthly expenses, rent, car payments, and credit card payments for at least two years. She estimated that her 401k balance was approximately \$58,000 after her recent loan.¹⁰

⁶ Tr. 38-43, 48, 52, 56, 62.

⁷ AE H, I, J, L, P.; Tr. 61.

⁸ Tr. 46-50, 63. See ISCR Case No. 03-017479 at 4 (App. Bd. Nov. 3, 2005)(It is reasonable to expect, but not required, that an applicant provide documentary evidence of her debt-resolution efforts).

⁹ Tr. 49, 50, 63.

¹⁰ Tr. 64-66.

Applicant's professionalism, character, and work performance are highly regarded by her co-worker and supervisor, and she has received several awards from her employer and the DOD client for her performance.¹¹

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(c), 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."

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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

¹¹ AE S-V.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal 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; and
- (c) a history of not meeting financial obligations.

Applicant's 15 debts totaled approximately \$21,800. These debts became delinquent between 2008 and 2015. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and (c).

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
- (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.

Most of Applicant's delinquent debts occurred prior to her relocation and period of unemployment. Her medical leave likely impacted her automatic withdrawals and caused her student loans to become delinquent in 2014. Since her medical leave, she has had only one small (\$106) medical collection, and she has remained current on her monthly financial obligations. She received a promotion and substantial raise in 2017, and she has resolved several of her delinquent accounts. AG ¶ 20(a) applies.

Applicant's financial problems were linked to her sister's drug addiction and fraudulent activities, Applicant's unemployment, and Applicant's medical leave. Despite these conditions beyond her control, Applicant initiated debt-resolution efforts when she became aware of her delinquent debts in 2015. She filed disputes, contacted creditors, and made payments totaling over \$12,800 towards her delinquent student loans (SOR ¶¶ 1.b.-1.e.). She also resolved the debts in SOR ¶¶ 1.g., 1.m., and 1.n. – totaling approximately \$1,150. Applicant acted responsibly in addressing and resolving her delinquent debts.¹² AG ¶¶ 20(b) and 20(d) apply.

Upon learning of several unfamiliar delinquent debts during her February 2015 security interview, Applicant filed disputes with the credit bureaus. Her disputes were reasonably based on her experiences with her sister's drug addiction and the similarities in their names, Social Security numbers, and addresses. Her employer's background investigation corroborated Applicant's claim as to the co-mingling of personal, criminal, and financial information between Applicant and her twin sister. AG ¶ 20(e) applies.

Conditions beyond Applicant's control contributed to her financial problems. Nonetheless, Applicant acted responsibly to address and resolve her delinquent debts, including those whose validity she disputed. Although some debts remain unresolved, she has demonstrated financial responsibility and mitigated the financial considerations security concerns.

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

¹² See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's professionalism, character, and work performance are highly regarded by her co-worker, supervisor, and DOD client. Despite circumstances beyond her control, she addressed and resolved her delinquent debts, while maintaining her monthly financial obligations. Given her burden to demonstrate financial responsibility, trustworthiness, and good judgment, 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:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a.-1.o.:	For Applicant

Conclusion

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

Eric H. Borgstrom
Administrative Judge