



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



In the matter of:)	
)	
)	ISCR Case No. 14-03758
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 24, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on April 8, 2015, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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), implemented on September 1, 2006.

Applicant received the SOR. She submitted a notarized, written response to the SOR allegations dated April 29, 2015. Because her answer was not complete, DOHA resent the SOR to her on May 28, 2015. Applicant received the second SOR mailing, and she submitted a complete answer dated June 8, 2015. She requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on November 13, 2015. Applicant received the FORM on November 20, 2015. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She did not submit a response. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on February 2, 2015. The Government submitted six exhibits, which have been marked as Items 1-6. Items 1 through 5 are admitted into the record. Applicant's response to the SOR has been marked as Item 1, and the SOR has been marked as Item 2.

Procedural and Evidentiary Ruling

Item 6 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. The 12-page document is a summary of an interview with an Office of Personnel Management (OPM) investigator of Applicant, which occurred on February 28, 2014, in conjunction with her background investigation. DoD Directive 5220.6, enclosure 2, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014).

Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte*. While it is clear that Department Counsel is attempting to act in good faith, having highlighted the issue in a footnote in the FORM, Item 6 is not authenticated. (See Government's FORM, p. 2, footnote 2) Applicant did not respond to the FORM. Her failure to do so is not a knowing waiver of the rule. Waiver requires "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner, 9th ed., West 2009).

Applicant was informed that she could object to the admission of Item 6 on the grounds it was not authenticated as required by ¶ E3.1.20 of the Directive. If she did so, the document in Item 6 would not be considered. I cannot conclude she expressly waived this rule because she did not respond to the FORM. The record does not establish that Applicant's failure to address the accuracy of Item 6 through a response to the FORM was a knowing waiver of the rules outlined in the Directive, enclosure 2, ¶ E3.1.20. Item 6 is not admitted into the record.

Findings of Fact

In her Answers to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.i, 1.k, and 1.m of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.j and 1.l of the SOR.¹ She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 54 years old, works as a welder for a DOD contractor. She began her current employment in February 2014. She also works part time in retail sales, a position she began in November 2013. Applicant worked as an office manager until 2008. She was unemployed from June 2008 until September 2012, when she began work as a medical secretary. This job ended in April 2013. She was again unemployed until September 2013 when she started work as an administrative assistant, a position which lasted two months.²

Applicant graduated from high school in 1979, and she received a medical secretary certificate in 2012 after completing a course of study. She married in 2004 and divorced in 2008. She has three daughters, ages 37, 32, and 27. She lives with her oldest daughter.³

The SOR listed 13 debts totaling approximately \$30,000. According to the credit reports of record, these debts became delinquent between 2009 and 2013. In her response to the SOR, Applicant admitted that she owed unpaid income taxes to the state in which she lived and that a state tax lien had been filed against her in June 2013. She also advised that she was paying the state revenue agency \$100 a month on this debt, but she did not provide proof of her payments.⁴

The creditor identified in SOR allegations 1.d (\$653) and 1.m (\$1,535) are the same. In her response to the SOR, Applicant advised that she was paying \$40 a month

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 3.

³Item 3.

⁴Item 1; The February 2014 credit report listed the state tax lien. However, the September 2015 credit report does not list the tax lien. The reason for the non-listing of the lien is unknown. Item 4; Item 5.

on the debt in 1.d and \$90 a month on the debt in 1.m. The September 2015 credit report indicated that the debt in 1.d was paid in full as of May 2015 and that the account had a zero balance. The second debt is not listed on this credit report for unknown reasons.⁵

SOR allegation 1.k concerns a student loan debt of \$2,319. In her response to the SOR, Applicant advised that she was paying \$80 a week on this debt. The September 2015 credit report indicates a balance of \$178 and a past-due amount of \$178. The credit report reflects a last payment made on this debt in August 2015. Although not listed on the February 2014 credit report, the September 2015 credit report identified two additional student loans held by this educational loan creditor with original balances of \$1,284 and \$1,242 respectively. The remaining balances on these loans as of August 2015 were \$119 and \$115 respectively.⁶

Applicant denied the \$26 phone debt in allegation 1.i. The 2014 credit report shows that she disputed this debt, which is not listed on the 2015 credit report. I find that Applicant successfully disputed this debt.

The remaining SOR debts are not paid. In her response to the SOR, Applicant advised that she planned to resolve her debts. The 2014 credit report identified 12 past-due or charged-off accounts between 2008 and 2013, which were legally paid for less than the full balance or paid. The same credit report also identified three accounts that were late, but were current as of the date of the report. Most of these accounts are now closed.⁷

Applicant did not provide an income and expense sheet or in the alternative, a copy of her earnings statement and a budget. The record lacks evidence of any credit counseling.

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 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, 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 ¶

⁵Item 1; Item 4.

⁶Item 1; Item 4.

⁷Item 1; Item 5.

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 access to classified information will be resolved in favor of 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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for 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 an 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 Executive Order 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 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when she was unemployed and attending school. Most of the debts have not been resolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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.

Applicant was unemployed for more than four years. During some of this time, she attended school, receiving training as a medical secretary. After completing her training, Applicant found a position as a medical secretary. Her position ended seven months later, leaving her again unemployed. She did eventually find a part-times sales position. During the years of unemployment, Applicant was unable to pay all her debts, which resulted in many past-due accounts. She worked with many of her creditors during this time, reaching a resolution of many of her past-due debts. This effort by Applicant to resolve her debts, even though unemployed, reflects that she acted responsibly under the circumstances. AG ¶ 26(b) applies.

The record lacks any evidence of credit or financial counseling. The credit reports show that Applicant has taken responsibility for some of her debts, and support her statements that she is resolving several of her SOR debts. Her overall financial picture is unknown. AG ¶ 20(c) has some applicability, but cannot be fully applied because her income and expenses are unknown.

The 2014 credit report reflects that Applicant paid many of her past-due debts during the time she attended school and while unemployed. Her statement that she is working on her debts, in particular the SOR debts listed in allegations 1.d, 1.k, and 1.m, is credible because the 2015 credit report shows these debts as resolved or being resolved. Her efforts show a good-faith effort⁸ to contact her creditors and resolve her debts. AG ¶ 20(d) is applicable. Applicant denied owing the debt in allegation 1.l (\$26) and successfully disputed this phone debt. AG ¶ 20(e) applies only to allegation 1.l.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct,

⁸The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of the "good faith" mitigation condition.

(Internal citation and footnote omitted) ISCR Case No.02-30304 at 3 (App. Bd. Apr.20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. The record lacks documentary evidence from Applicant that shows her income, expenses, and debt payments. Such evidence would provide a clear picture of her overall financial well being. In this case, the lack of this evidence is not fatal to Applicant’s request for a security clearance because the credit reports of record reflect that she has paid many past-due debts not listed on the SOR and that she is paying or has paid several SOR debts as she advised. The credit reports show a track record for debt resolution. Her response provides a partial plan to resolve her debts, a little at a time. Her response is credible because it is supported by the credit reports’ reflection of payments on some of her SOR debts. Her failure to pay all her state tax debts is not explained, but she has taken responsibility for this debt now that she is working. Applicant made choices during the time she was unemployed about resolving her debts, using the information she had at that time. She is steadily employed, giving her income to continue working on her debt resolution. She lives with her daughter, which helps with lowering her overall living expenses. A review of the record indicates that Applicant handled classified information properly. There is little likelihood that her debts would be a source of improper pressure

or duress. Of course, the issue is not simply whether all her debts are paid: it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her finances under Guideline F.

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.m:	For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge