



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 14-04944
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

09/04/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Her past-due mortgage was settled by a deed of trust. A vehicle repossession resulted in a \$7,500 refund. Although other delinquent accounts have yet to be paid, Applicant has mitigated the financial considerations security concerns. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on November 17, 2014, the DoD issued a Statement of Reasons (SOR) detailing financial considerations

¹ 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 (AG) effective within the DoD on September 1, 2006.

security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On December 5, 2014, Applicant answered the SOR and requested a hearing. On February 22, 2015, I was assigned the case. On June 18, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on July 9, 2015.

At the hearing, Government's Exhibits (Ex) 1 through 4 and Applicant's Exhibits A through Q were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. No Additional material was received. On July 17, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, she denied one charged-off account (SOR 1.d, \$7,892), asserted one debt (SOR 1.c, \$30) was paid, and admitted the remaining SOR delinquent accounts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 42-year-old senior systems engineer who was employed by a defense contractor. She seeks to obtain a security clearance. From May 1993 through May 2003, she honorably served in the U.S. Navy, separating as petty officer second class, (E-5). (Ex. 3, Tr. 20, 25) She receives \$258 monthly in disability payments from the U.S. Department of Veteran's Affairs for her service connected disability rated at 20 per cent (Tr. 25).

In March 2014, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1) She indicated she had financial problems and listed six of the SOR debts. (Ex. 1) Her March 2014 credit report listed a vehicle repossession, late payments on four accounts, seven collection accounts, and thirty-six accounts listed as timely paid. (Ex. 3)

Applicant and her ex-husband were married 13 years. (Ex. 20) They met when both were serving in the U.S. Navy. (Tr. 25) from 2005 through 2008, after leaving the military, she worked for a time with the same contractor in 2013 and 2014. (Tr. 20) Following the 2007 birth of her son, Applicant was a stay-at-home mother.

In April 2012, Applicant's then-husband quit his job, which had been paying \$150,000 annually. Until that point, all their accounts were timely paid. (Tr. 20) Her September 2005 credit report does not list any derogatory financial information. (Ex. 2) Her then-husband was unemployed until October 2012, when he obtained a position with an annual salary of \$119,000. While unemployed, he received \$1,800 monthly unemployment compensation. In July 2012, Applicant and her husband entered a "Keep Your Home" state unemployment program that paid the first mortgage on their home. (Ex. J) The monthly mortgage payment was \$2,727. (Ex. H)

Applicant's husband was employed from October 2012 through January 2013. He was then out of work for two months. In March 2013, he obtained a new position with a net monthly pay of approximately \$18,000.² (Ex. Q) In April 2013, Applicant discovered her husband was hiding money from her. (Tr. 21) She withdrew the bulk of the discovered money and used it to pay their bills. (Tr. 23)

In January 2013, Applicant's husband left the family home after 13 years of marriage, and in July 2013, he filed for divorce. (Tr. 20, 22) In May 2013, her husband was again unemployed. Applicant's ex-husband has failed to honor his \$2,500 monthly child support obligation and a \$5,745 monthly spousal support obligation. (Tr. 24) As of December 2014, he was more than \$46,500 delinquent on his support obligations. She has sought assistance from the state child support service, which has contacted the corresponding state agency in her ex-husband's state. That state then took her ex-husband's driver's license. (Tr. 35) The state's next step is to commence a garnishment action. (Tr. 35)

In September 2013, Applicant obtained a three-month job working for a school district, which paid \$10 per hour. (Tr. 23) She wanted to bring the bank consolidation loan (SOR 1.b, \$28,966) current but was too far behind on missed payments to do so. (Tr. 29) In December 2013, she obtained a job with an \$80,000 annual salary. (Ex. M, N) In April 2014, she was laid off from that job. The company's president and CEO wrote a letter of recommendation stating Applicant had previously worked for the company in 2005.³ The CEO states Applicant's work performance was outstanding and Applicant showed great personality, character, education, and exemplified great credibility. (Ex. K)

In October 2014, Applicant received financial counseling. (Ex. O, Tr. 40) In counseling she learned about budgeting, loss of employment, responsibility for debts, and how to bring obligations current. (Tr. 40) When unemployed, she received \$1,044 monthly unemployment compensation. (Ex. I) She currently lives with her mother and has contemplated filing for Chapter 7 bankruptcy relief. (Tr. 34) The financial hardships required her son to be removed from many after-school activities and the discontinuance of cable television. (Tr. 41) She currently receives monthly public assistance in the form of approximately \$500 in cash payment and approximately \$300 in food stamps. She has been offered a hospital job paying \$43,000 annually with the job starting the week following the hearing. (Ex. L, Tr. 27)

Applicant owed \$367,500 on the first mortgage (SOR 1.a) and \$88,000 on the second mortgage (SOR 1.h). In January 2015, Applicant received notice of a "Trustee's Deed Upon Sale." (Ex. B) Upon resale of the home, \$358,000 was paid on a debt of approximately \$406,000. (Ex. B, Tr. 28) Since this action, she has not been contacted

² The job offer lists a \$125,000 base salary for 40 hours per week, but the job required work up to 84 hours per week with all hours after 40 being paid at \$60.00 per hour. (Ex. Q)

³ In 2005, after leaving the U.S. Navy, Applicant worked for the same company, and resumed employment with this company in December 2013. (Ex. K)

by either mortgage company. (Tr. 27) There was also a \$50,000 swimming pool loan (SOR 1.i) that was charged off. (Tr. 33) She would like to resolve the swimming pool debt, but has no resources to do so. (Tr. 33) The divorce decree divided this loan obligation equally. (Ex. H)

In May 2007, Applicant and her husband purchased a vehicle for approximately \$34,000. Payments were timely made until October 2013. (Ex. 3) The vehicle was repossessed and sold. Following the sale, her ex-husband received a \$7,500 refund because the value of the vehicle following sale exceeded the amount due on the vehicle. (Ex. E, Tr. 33)

In December 2014, the \$30 collection debt (SOR 1.c) was paid. (Ex. C, Tr. 30) The debt consolidation loan (SOR 1.b, \$28,966) remains unpaid. (Tr. 30) Applicant has been in communication with the creditor, but the creditor wanted a lump-sum payment which was beyond her ability to pay. (Tr. 30) She denies owing the \$7,892 credit card account (SOR 1.d). (Tr. 30) There are two credit card collection accounts with this creditor. She had one credit card (SOR 1.k, \$9,983) and her husband had his own card, which he opened on his own without her being an authorized user of the card. (Tr. 30, 37) The divorce decree required each to pay their own account. (Tr. 36) In October 2014, the collection agency offered to settle the debt on her account for \$6,000, divided into 12 monthly payments, but Applicant has been unable to accept the offer, and she is unable to make the requested payments. (Ex. F, Tr. 35)

The \$3,000 charged-off account (SOR 1.e) remains unpaid. (Tr. 31) the account was opened for maintenance on Applicant's vehicle. She is \$517 past-due on a \$2,300 credit card account, which remains unpaid. (Tr. 12) The creditor of the approximate \$8,000 credit card debt (SOR 1.l) brought suit for recovery of the debt. After Applicant explained her financial status, the creditor requested the suit be dismissed. (Ex. G, Tr. 34)

Applicant was paying on a credit card account (SOR 1.f \$492 past due on \$1,759 balance) until it went delinquent in 2013. Applicant arranged a repayment agreement on the past-due account. In May 2013, she started making \$37 monthly payments and continued until being laid off in August 2014. (Ex. D, Tr. 31)

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 must be considered 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(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 interests of 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, 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 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 Executive Order (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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or 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 repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant was past due on her first (\$367,000) and second (\$88,000) mortgages, had a \$50,000 charged-off loan, and was delinquent on other collection and past-due accounts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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, 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.

Until 2012, all of Applicant's accounts were timely paid. Starting in April 2012, her then-husband went through a period of short-term employment and unemployment. At that time, Applicant was a stay-at-home mother. In January 2013, her then-husband left the family home after 13 years of marriage and in July 2013 they divorced. Her ex-husband is more than \$46,000 behind on his support payments. Applicant was unemployed and had low-paying jobs until December 2013 when she secured a position for five months. The job paid \$80,000 annually, but ended in April 2014 due to Applicant's failure to have a security clearance. Following the hearing, she expected to start a job paying \$40,000 annually.

Applicant is no longer liable on her mortgage there having been issued a Trustee's Deed Upon Sale. The amount received from the sale of the vehicle exceeded the amount owed on the vehicle. The 2013 vehicle repossession resulted in her ex-husband receiving \$7,500. She was never on her husband's credit card (SOR 1.d) and her divorce degree stated she was liable for her account, and he was liable for his account. The creditor offered to settle this credit card debt for \$6,000, but she has had insufficient funds to accept and make payment on the offer. She paid a collection account (SOR 1.c). She would like to pay the remaining debt, but has not been sufficiently employed to address her past-due obligations.

Because Applicant has multiple delinquent debts and her financial problems are continuing in nature, she receives minimal application of the mitigating conditions listed in AG ¶ 20(a). Under AG ¶ 20(b), in 2013, Applicant separated, divorced, and experienced the financial burden associated therewith. Since the divorce, her ex-husband has failed to meet his support obligations. Until the separation in 2012, all financial obligations were timely paid. The divorce and lack of employment were conditions beyond her control. AG ¶ 20(b) applies.

Under AG ¶ 20(c) and ¶20(d), Applicant paid one debt, received a refund following a vehicle repossession, and is no longer liable on her past-due mortgage obligations. She has received financial counseling. She still has some sizable obligations yet to address. To this point her unemployment and under employment⁴ has prevented her from bring her debts current. Based on her financial history prior to her divorce and on the recommendations of the president of the company she worked for in 2013 and 2014, I believe she will honor her financial obligations when she has the

⁴ In ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant, who had been sporadically unemployed and lacked the ability to pay her creditors, noting that "it will be a long time at best before she has paid" all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. *See* ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ability to do so. She has received offers lowering the amount of debt listed in the SOR, but lack of employment prevented her from accepting the offers. AG ¶ 20(c) and ¶ 20(d) apply.

Applicant has challenged one collection account. There were two separate accounts with the same creditor. Applicant had one credit card and her ex-husband had another. She was not an authorized user on his card. The mitigating condition listed in AG ¶ 20(e) requires documentation concerning disputed accounts. She provided a copy of her divorce decree indicating she was to pay her account, and her husband was to pay his account.

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(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.

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. She honorably served in the U.S. Navy and currently receives disability payment for that service. The debts incurred were not the type that indicates poor self-control. The only questionable purchase and loan was for the swimming pool. However, at the time the loan was made her then-husband was making \$150,000 annually, and the housing market in the state had yet to go into crisis.

Applicant would like to pay her debts, but her unemployment, under employment, and lack of support payments has made that impossible. She moved in with her mother to save money and curtailed her son's after-school activities. Circumstances placed her in a position making it impossible to make larger payments. She is no longer liable on the largest SOR obligations, those relating to her delinquent mortgages. And the repossession of her vehicle resulted in a refund and not a liability.

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. (See AG ¶

2(a)(1).) Applicant has kept in contact with her creditors. I must reasonably consider the entirety of Applicant's financial situation and her actions in evaluating the extent to which she has acted reasonably under the circumstances.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.l: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge