



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



In the matter of:)	
)	
)	ISCR Case No. 14-05535
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

07/24/2015

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 February 26, 2014. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on January 10, 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 on January 20, 2015. She submitted a notarized, written response to the SOR allegations dated January 21, 2015, and 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 May 11, 2015. Applicant received the FORM. She had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. She submitted a response dated June 3, 2015. DOHA assigned this case to me on July 15, 2015, and I received the case on July 21, 2015. The Government submitted five exhibits, which have been marked as Items 1-5 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. Her written response to the FORM is admitted into the record as Applicant Exhibit (AE) A.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.c - 1.g of the SOR. Her admissions are incorporated herein as findings of fact. She denied the factual allegations in ¶¶ 1.b and 1.h 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 68 years old, works as an administrative assistant for a DOD contractor. She began her current employment in March 1990. She has not been disciplined at work nor does the record contain any evidence that she has violated company proprietary rules or the rules for handling classified or sensitive information.²

Applicant was born and raised in Hong Kong. She married a United States citizen in 1987 and moved to the United States. She became a naturalized United States citizen in 1989. She has a 48-year-old stepdaughter, who is a United States citizen residing in the Philippines. Her parents and her husband's parents are deceased.³

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.

On her e-QIP, Applicant listed two large credit card debts. She advised that her husband fell victim to a Nigerian money scam and used their credit cards to pay the scammers. She has not provided any other information about the source of the SOR debts.⁴

The SOR identifies eight delinquent debts, totaling \$72,444. Allegation 1.a concerns a debt charged off in the amount of \$26,399 in 2008. Applicant advised that she paid \$150 a month on this debt for “some” time and that in 2013 the creditor issued a form 1099C and reported the debt to the Internal Revenue Service. She advised that she paid taxes on this debt. She did not provide any documentation to support her statement.⁵

Applicant contends that allegations 1.b (\$10,842) and 1.d (\$7,954) are the same debt as she had only one account with the original creditor. The October 2014 credit report does not show the account number for the original creditor or the collection companies. The March 2014 credit report lists an account number for the collection creditor, but not the original creditor. I find that these are the same debt. Applicant provided documentation from the creditor in allegation 1.d, which reflects that she had reduced the balance of this debt. She pays this creditor \$150 a month.⁶

SOR allegation 1.c concerns a \$8,809 debt. The March 2014 credit report lists the first 12 digits of the 16-digit account and the October 2014 credit report provides the same first six digits of the 16-digit account, as on the March 2014 credit report. Applicant provided documentation from the collection agent for this creditor with the last four digits of a 16-digit account number. Her documentation from the creditor reflects that she had reduced the balance to \$7,549 as of April 21, 2015. Applicant pays \$170 a month on this debt and advised that she made a payment by April 30, 2015 and on May 17, 2015, which reduced her debt another \$300.⁷

Concerning the \$2,841 debt in allegation 1.e, Applicant provided documentation reflecting that as of April 30, 2015, she owed \$1,642 on this debt. She advised that she pays \$150 a month on this debt. Applicant also provided documentation that she paid another debt owed to this creditor in 2014.⁸

Applicant provided documentation showing that the balance on the debt in allegation 1.f (\$5,851), as of May 22, 2015, was \$3,551. She advised that she pays \$200 a month on this debt. Applicant’s documentation also shows that the balance on

⁴Item 3.

⁵Item 1; Item 2; Item 5.

⁶Item 2; Item 4; Item 5; AE A.

⁷Item 4; Item 5; AE A.

⁸Item 4; Item 5; AE A.

the debt in 1.g (\$5,276), on May 12, 2015, was \$2,996 and that she pays \$170 a month on this debt.⁹

Applicant denies that she owes any money to the creditor in allegation 1.h (\$4,472). Applicant advised that she paid the final payment on this debt in March 2014, but she did not provide documentation to support this statement. She did provide documentation that she paid another debt not listed in the SOR. The credit reports also show that Applicant paid another collection account.¹⁰

Applicant did not provide any information about her monthly household income or her monthly expenses. Her documentation reflects that she is paying approximately \$820 a month on her SOR debts. The record lacks any evidence of credit or financial counseling. The credit reports of record do not show any new delinquent debt owed by Applicant.

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 ¶ 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

⁹Item 4; Item 5; AE A.

¹⁰Item 5; AE A.

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 her husband used their credit cards to send money to scammers in Nigeria. At the time of the SOR issuance, 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:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debt arose because her husband, not she, fell prey to a financial scam originating in Nigeria. While she is not likely to be involved in such actions, there is some question as to whether her husband may again be scammed. His conduct is not a reflection on her current reliability, trustworthiness, or good judgment. Her husband's decision to send the money was an action beyond her control. Applicant took control of the situation some time ago, when she began paying some of the debts. While there is no evidence that she has taken financial counseling, she has taken control of their debts. She has paid several debts before the SOR was issued. She developed a payment plan for six SOR debts and is in compliance with her plans. Her actions reflect a "good-faith" effort by her to resolve her debts. Through the monthly payments, she has reduced each of these debts. It will be some time before all her debts are resolved, but she has shown that she can and will pay the debts.

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, 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. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's debts arose when her husband fell prey to a Nigerian scam. Her earlier credit report reflects many debts. Although Applicant did not provide a copy of her 1099C form or her 2013 tax return to show that the debt in SOR has been resolved nor did she provide documentation to indicate that the debt in SOR allegation 1.h is paid, her statements that she resolved these debts are credible in light of the other documentation she

provided, which shows that she is paying on the remaining six SOR debts. The March 2014 credit report and two letters from creditors also show the payment of three other debts by Applicant. Applicant took control of her debts when she developed payment plans as a way to resolve her debts. She has resolved several debts and is resolving the six remaining SOR debts. Through her actions, she has shown a track record for payment of her debts. The credit reports of record do not indicate that she is continuing to acquire additional unpaid debts. She has control over her finances and her past-due debts. Her past-due debts are not a security concern.

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.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 interest to grant Applicant eligibility for a security clearance. Eligibility for a security clearance is granted.

MARY E. HENRY
Administrative Judge