



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



In the matter of:)
)
 ----) ISCR Case No. 15-01043
)
 Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

12/31/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On August 1, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On August 5, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

¹ GE 1 (e-QIP, dated August 1, 2014).

Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on August 17, 2015. On August 29, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on September 29, 2015. The case was assigned to me on October 13, 2015. A Notice of Hearing was issued on October 15, 2015, and I convened the hearing as scheduled on October 27, 2015.²

During the hearing, 3 Government exhibits (GE 1 through GE 3) and 11 Applicant exhibits (AE A through AE K) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on November 5, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She timely submitted a number of documents, which were marked as AE L through AE O, and admitted into evidence without objection. The record closed on November 10, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.f.).³ Applicant's answers are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor. She has been an analyst since December 2003.⁴ Applicant attended college over a multi-year period, sometimes attending part-time, and sometimes full-time, generally while working. She received a bachelor's of science degree in June 1992.⁵ She has never served with the U.S. military.⁶ She has held a secret security clearance since 2005.⁷ She has never been married.⁸

² It should be noted that Department Counsel and Applicant had previously spoken by telephone as to the potential dates for the hearing, and although the Notice of Hearing had been issued on October 15, 2015, scheduling the hearing for October 26, 2015, that Notice was apparently not timely received by Applicant. On October 26, 2015, it was determined that Applicant was not yet present to commence the hearing, but was on her way to the hearing location. Rather than having her appear in a hurried manner, she was offered the option to appear the following day with her witnesses and evidence. Applicant accepted that opportunity. The hearing was postponed for one day. Upon convening the hearing, Applicant expressly waived any potential defects in notice, and she agreed to proceed. See Tr. at 12-14.

³ During the proceeding, Department Counsel moved to amend the SOR by withdrawing ¶ 1.f. because it duplicated the allegation in ¶ 1.a. There was no objection to the motion. The motion was granted, and the SOR was amended in the manner described. Tr. at 21-22.

⁴ GE 1, *supra* note 1, at 9.

⁵ GE 1, *supra* note 1, at 9; Tr. at 28-29.

⁶ GE 1, *supra* note 1, at 11.

Financial Considerations

It is unclear when Applicant first started having issues with her finances. The combination of high tuition fees, expensive student loans, under-employment, and unexpected household problems, all contributed to her financial situation. While initially working and going to school, she earned from \$4 to \$6 per hour. She funded her own inexpensive community college tuition and costs, but later, upon transferring to a more expensive state college, she sought the assistance of student loans and grants. She estimated she spent \$30-\$35,000 of her own money and obtained student loans of approximately \$20-\$25,000.⁹ In 1994, when her father passed away, Applicant moved into the family home, and she has resided there with her mother since that time. She contributes to the mortgage payments. Applicant has been faced with a panoply of unexpected problems including severe termite issues requiring extensive remediation, an old air conditioner that had to be replaced for approximately \$10,000, and plumbing problems.¹⁰

Applicant's financial situation improved when her annual salary increased from approximately \$60,000 to about \$90,000. She now earns over \$40 per hour. She monitored her credit reports and noticed several errors. Seeking to clean up her credit record, Applicant engaged the professional services of a credit repair service company. She paid the company approximately \$600, and a number of errors were removed from her credit reports and other credit-reporting errors were corrected.¹¹ It is unclear if Applicant received any financial counseling regarding budgeting, debt consolidation, or debt repayment plans. She shifted away from her use of credit cards, recently paid off one card, and is paying down the remaining cards.¹² She filed her income tax returns for the last three years on time, and received small refunds.¹³

On November 10, 2015, Applicant submitted a Personal Financial Statement which reflected a monthly net income of \$4,069.74; normal monthly expenses of \$2,352.36; and monthly debt payments of \$1,374.23. Her net monthly remainder was \$343.15, available for discretionary savings or spending.¹⁴

⁷ GE 1, *supra* note 1, at 21; Tr. at 7, 16.

⁸ GE 1, *supra* note 1, at 13.

⁹ Tr. at 30-33.

¹⁰ Tr. at 52-54.

¹¹ Tr. at 49, 55-56; GE 1, *supra* note 1, at 23.

¹² Tr. at 50-51.

¹³ Tr. at 51-52.

¹⁴ AE O (Personal Financial Statement, dated November 10, 2015).

The SOR, as amended, identified five purportedly delinquent debts that had been placed for collection, as reflected by an August 2014 credit report¹⁵ and a July 2015 credit report.¹⁶ Those debts, totaling approximately \$46,594, and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶¶ 1.a. and 1.b.): These are a direct unsubsidized consolidated student loan account with a high credit of \$29,616 and a past-due balance of either \$39,024 or \$39,466; and a direct subsidized consolidated student loan account with a high credit of \$4,451 and a past-due balance of \$5,807. They were placed for collection in 2014 and transferred.¹⁷ The loans were in deferment and forbearance before entering an apparent default status. Applicant actually had been making monthly payments by automatic, electronic transfers, of \$250 prior to January 2013. The payments increased to \$300 per month on January 31, 2013; to \$370 per month in January 2014; and to \$400 per month in January 2014.¹⁸ For some unexplained reason, her payments were not reported to the credit reporting agencies.¹⁹ The student loan data report furnished by the National Student Loan Data System for Students (NSLDS) does not reflect the current status of the student loan accounts.²⁰ Nevertheless, it appears that the accounts are in the process of being resolved.

(SOR ¶ 1.c.): This is a bank credit card with a credit limit of \$250 and a high credit of \$441 that was placed for collection and sold to a debt purchaser in 2009 after Applicant was involved in an automobile accident and out of work for several weeks.²¹ The debt purchaser increased the unpaid balance, first to \$841, and then to \$878.73.²² Applicant contacted the debt purchaser and it was agreed that Applicant would pay \$878.73, on or before January 31, 2016, to satisfy and close the account.²³ Applicant contends she started making unspecified payments in September 2015, but she had not yet reached the goal of paying the account off.²⁴ The account is in the process of being resolved.

¹⁵ GE 2 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 12, 2014).

¹⁶ GE 3 (Equifax Credit Report, dated July 10, 2015).

¹⁷ GE 2, *supra* note 15, at 5, 9; GE 3, *supra* note 16, at 2

¹⁸ Tr. at 33-35; AE L (Student Loan Payment Details, undated).

¹⁹ Applicant's Answer to the SOR, dated August 29, 2015, at 3; Tr. at 39.

²⁰ AE L, *supra* note 18.

²¹ Applicant's Answer to the SOR, *supra* note 19, at 3; GE 2, *supra* note 15, at 6, 8; GE 3, *supra* note 16, at 2.

²² GE 2, *supra* note 15, at 6; GE 3, *supra* note 16, at 2; AE N (Letter, dated November 2, 2015).

²³ AE N, *supra* note 22.

²⁴ Tr. at 46

(SOR ¶1.d.): This is an automobile loan with a high credit of \$34,461 and remaining balance of \$22,888 that became two months past due in February 2015, but was never placed for collection.²⁵ Applicant fell behind in her payments when she had to prioritize her allocation of funds first to the two major appliances and a new air conditioner in her residence.²⁶ She resumed making payments in June 2015, and the account is now current.²⁷ The account has been resolved.

(SOR ¶ 1.e.): This is a department store charge account with a credit limit of \$165 and high credit of \$433 that was reported as charged off in the amount of \$433 in August 2008.²⁸ The report was in error. Applicant had paid the account on August 18, 2008, seven years before the SOR was issued.²⁹ The account has been resolved.

Work Performance and Character References

Applicant's supervisor said that Applicant "significantly exceeds in her performance within our group. She is dependable and provides accurate and quality reporting. [Applicant] works independently and uses good judgment in her decision making."³⁰ Applicant has also served as a mentor for other employees, and their feedback is generally four or five out of the best five, and in some cases, "firewall" fives.³¹ The former branch operations manager of the bank where Applicant previously worked also had very positive things to say about her: "[Applicant] has always displayed professionalism, honesty, and a good work ethic. . . I can vouch for her character or anything else that you need me to confirm."³² A coworker, who has known Applicant since high school, has great respect for Applicant and has witnessed Applicant as a strong team player.³³ Applicant's mother is effusive in her praise for Applicant. She characterized Applicant as dependable, reliable, and trustworthy. They have joint bank accounts. "[Applicant] has been a big help. I know that whenever I need her she's there. She usually just takes over, takes care of things. She is just a - - she's a good daughter."³⁴

²⁵ GE 2, *supra* note 15, at 5; GE 3, *supra* note 16, at 3.

²⁶ Applicant's Answer to the SOR, *supra* note 19, at 4.

²⁷ GE 3, *supra* note 16, at 3; Tr. at 47.

²⁸ GE 2, *supra* note 15, at 6.

²⁹ AE M (Letter, undated); Tr. at 47-48; Applicant's Answer to the SOR, *supra* note 19, at 4.

³⁰ AE A (Performance Review, dated December 31, 2014).

³¹ AE E-2 (Mentoring Feedback, undated); AE F-2 (Mentoring Feedback, undated); AE G-2 (Mentoring Feedback, undated); AE H-2 (Mentoring Feedback, undated); AE I-2 (Mentoring Feedback, undated); AE J-2 (Mentoring Feedback, undated); AE K-2 (Mentoring Feedback, undated).

³² AE C (Character Reference, undated).

³³ AE B (Character Reference, dated September 29, 2015).

³⁴ Tr. at 62-63.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”³⁵ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³⁶

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”³⁷ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.³⁸

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

³⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁷ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”³⁹

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. While it appears that Applicant may have had some isolated instances when she was unable to maintain all of her monthly payments, it is unclear when or if Applicant’s financial situation deteriorated to the point where she established a history of not doing so. Two accounts (an auto loan and a credit card) and possibly a

³⁹ *Egan*, 484 U.S. at 531.

⁴⁰ See Exec. Or. 10865 § 7.

student loan became delinquent. AG ¶ 19(a) has been established. AG ¶ 19(c) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”⁴¹ Under AG ¶ 20(e), the disqualifying condition may be mitigated where “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.”

AG ¶¶ 20 (a), 20(b), 20(c), 20(d), and 20(e) apply. Applicant’s financial problems were not caused by frivolous or irresponsible spending. The nature, frequency, and recency of Applicant’s isolated financial difficulties facilitate the conclusion that those financial issues occurred “so long ago” and they were “infrequent.” Applicant was faced with a number of unexpected household problems including severe termite issues requiring extensive remediation, an old air conditioner that had to be replaced for approximately \$10,000, and plumbing problems. She also referred to two major appliances that required attention. She was involved in an automobile accident and was out of work for several weeks. Those circumstances were substantially beyond her control. Applicant was briefly forced to prioritize her monthly payments because of an inability to make the normal payments. Now that the financial situation has improved and stabilized, it appears that Applicant’s unanticipated financial issues occurred under such circumstances that they are unlikely to recur.

⁴¹ The 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) in order to claim the benefit of [the “good-faith” mitigating 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)).

Applicant monitored her credit reports and noticed several errors. She engaged the professional services of a credit repair service company, and through their joint efforts, a number of errors were removed from her credit reports and other credit-reporting errors were corrected. Applicant contacted her known creditors and it was determined that her student loans, which had been in deferment and forbearance, and possibly in default, were not being accurately reported as being paid over a multi-year period. One department store charge account was erroneously reported as charged off, when in reality, it had been paid off in 2008, seven years before the SOR was issued. An automobile loan was at one point two months past due, but Applicant resumed her monthly payments in June 2015, two months before the SOR was issued, and that account is now current. Only one account alleged in the SOR has not yet been fully resolved. Applicant started making payments in September 2015, and the account is expected to be paid off by January 2016. Applicant has no other delinquent accounts. With a net monthly remainder of \$343.15 available for discretionary savings or spending, there are clear indications that Applicant's financial problems are under control. Applicant's actions, under the circumstances confronting her, no longer cast doubt on her current reliability, trustworthiness, and good judgment.⁴²

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(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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴³

There is a paucity of evidence against mitigating Applicant's conduct. Some of her accounts became periodically delinquent.

⁴² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁴³ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

The mitigating evidence under the whole-person concept is more substantial. Applicant has an outstanding reputation in the workplace. Applicant may have had some isolated instances when she was unable to maintain all of her monthly payments, but it does not appear that Applicant's financial situation deteriorated to the point where she established a history of not doing so. Instead, Applicant was faced with a number of unexpected household problems and an automobile accident that required that she prioritize her monthly payments. She had errors removed from her credit reports, and other credit-reporting errors were corrected. It was determined that her student loans were not being accurately reported as being paid over a multi-year period. Another account was incorrectly reported as charged off, when in fact it had been paid off, seven years before the SOR was issued. Applicant has resolved all but one of her debts, and that one is expected to be resolved by January 2016, as payments commenced in September 2015. There are clear indications that Applicant's financial problems are under control. Her actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, and good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] 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. 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.⁴⁴

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts. Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

⁴⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Withdrawn

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 access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge