



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



In the matter of:)
)
) ISCR Case No. 14-06013
)
Applicant for Security Clearance)

Appearances

For Government: Meg Foreman, Esq., Department Counsel
For Applicant: Jacob T. Ranish, Esq.

03/04/2016

Decision

CURRY, Marc E., Administrative Judge:

Applicant has either satisfied all of her financial delinquencies, or has been paying them through payment plans. Her ability to get control of her finances was facilitated by a \$55,000 pay increase over the past two years and the successful completion of some online money management courses. Under these circumstances, she has mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On May 22, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On July 26, 2015, Applicant answered the SOR, admitting the

allegations and requesting a hearing, whereupon the case was assigned to me on September 17, 2015. DOHA issued a notice of hearing on September 23, 2015, scheduling the hearing for November 2, 2015. The hearing was held as scheduled. At the hearing, I received five Government exhibits (GE 1 - GE 5) and 13 Applicant exhibits (AE A - AE M). Also, I considered the testimony of Applicant and a character witness. DOHA received the transcript (Tr.) on November 9, 2015.

Findings of Fact

Applicant is a 35-year-old single woman who is a high school graduate and has attended college intermittently over the years. She is a few credits short of earning a bachelor's degree. (Tr. 77) She works for a defense contractor as an acquisitions analyst. (Tr. 20) She has held a security clearance since 2007.

Applicant is highly respected on the job and in her community. A former supervisor characterizes her as a mature, responsible person who works well under stress. (AE L at 29) Another former coworker, who indirectly supervised her, characterizes her as reliable, trustworthy and highly motivated. (AE L at 16)

Applicant has been living in the same metropolitan area for approximately 10 years. Previously, she had spent her entire life in a small, rural town. Upon relocating, she underestimated the difference in the cost-of-living in her home town as compared to the area where she relocated. (Tr. 20) Also, as a young person in her mid-twenties, she eagerly availed herself of the city's more cosmopolitan lifestyle, frequently going to parties, trips, museums, and other social outings, in an effort to make friends. (Tr. 27)

Having no experience managing a budget, and only a marginal understanding of the relationship between compound interest and credit card debt, Applicant gradually lost control of her finances. (Tr. 24) By 2010, she had incurred approximately \$15,000 of delinquent debt, as alleged in the SOR, including a tenant-related debt (subparagraph 1.a, as duplicated in subparagraph 1.b), credit cards and utilities (subparagraphs 1.c, 1.g; and 1.l - 1.k), and student loans (subparagraphs 1.d - 1.f, 1.h, and 1.l).

Later in 2010, Applicant contacted a debt resolution company. For a \$500 fee and an ongoing payment of \$100 monthly, the company agreed to contact her creditors, negotiate settlements, and help her satisfy the debt. (AE J) Initially, the company provided Applicant with frequent updates. As time progressed, the contacts decreased. (Tr. 29) By 2012, Applicant had paid the company nearly \$3,000, yet had made nominal debt reduction progress.

Frustrated, Applicant contacted her state attorney general's office and discovered that the debt resolution company was embroiled in a class action lawsuit alleging fraudulent misrepresentation. (AE J at 11) Applicant attempted to join the lawsuit, but discovered that she had missed the inclusion deadline. (Tr. 35)

At some point during the past 18 months, Applicant began personally contacting creditors and arranging payment plans. By October 2015, she had satisfied the back rent, the credit card debts, and the delinquencies, as listed in subparagraphs 1.a, 1.c, 1.g, and 1.i through 1.k and 1.m, in their entirety. (AEs A, B, D, E - G, and M, respectively)

Applicant owed delinquent student loans to two colleges. The loans listed in subparagraphs 1.d, 1.e, 1.f, and 1.h, totalling approximately \$4,500, stem from a college she attended before relocating in 2005. Subparagraph 1.i, totalling approximately \$2,200, stems from a class she took recently. Applicant negotiated a reduced settlement amount with the first group of student loans for \$3,400. Since then, she has satisfied subparagraphs 1.e and 1.h entirely (AE C at 2), and has been satisfying subparagraphs 1.d and 1.f through monthly payments. (AE C at 1) As for subparagraph 1.i, she made a payment arrangement under which she made a \$620 initial payment in October 2015 and has been making \$85 payments since then. (AE H)

Applicant has student loan debt other than what is alleged delinquent in the SOR. Collectively, it totals \$170,000, and is not delinquent. (AE K at 2; Tr. 65-66; Tr. 83-84)

Between 2011 and the present, Applicant's salary has increased by \$55,000, from \$75,000 annually to \$130,000 annually. (Tr. 79) Her steady salary increases have facilitated her ability to get her financial issues under control.

Recently, in October 2015, Applicant completed several online financial management courses. (AE M) With the help of her boyfriend, a licensed financial planner whom she plans to marry, Applicant developed a budget. (Tr. 88) She has approximately \$2,365 of monthly after-expense income, \$1,500 in savings, and \$50,000 invested in a retirement plan. (AE K; Tr. 77)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Between 2005 and 2010, Applicant incurred approximately \$15,000 of delinquent debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 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; and

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

Although Applicant’s struggle with adjusting to the high cost-of-living in the area where she relocated is certainly understandable, it does not rise to the level of a problem beyond her control, as set forth in AG ¶ 20(b). I conclude this mitigating condition does not apply.

Regardless of how Applicant incurred her delinquent debts, she has now either satisfied them entirely, or is satisfying them through payment plans. She has completed online financial counseling classes, and with the help of her boyfriend, a licensed financial planner, has organized a budget. These steps, together with her substantially higher income than she earned five years ago, makes the possibility of recurrence minimal. I conclude that AG ¶¶ 20(c) and 20(d) apply, and that Applicant has mitigated the security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant, a youth in her mid-twenties when she relocated from her small, rural home town, overspent on social outings in an effort to make new friends. Although this does not trigger the application of AG ¶ 20(b) of the financial considerations guideline, it is important, however, when assessing the relationship between her financial problems and her maturity under the whole-person concept factors. In essence, much of Applicant's successful elimination of her debts can be attributed to the fact that she is now older and wiser.

Applicant's strong character references were other factors that reflected positively in her favor. Considering this case in the context of the whole-person concept, I conclude that Applicant has mitigated the security concern.

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 access to classified information is granted.

MARC E. CURRY
Administrative Judge

