



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



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| In the matter of: |) | |
| |) | |
| [Name Redacted] |) | ISCR Case No. 15-01768 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Mary M. Foreman, Esquire, Department Counsel
For Applicant: *Pro se*

04/29/2016

Decision

HOGAN, Erin C., Administrative Judge:

On November 4, 2015, the Department of Defense (DOD) 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) effective within the Department of Defense after September 1, 2006.

On November 16, 2015, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on January 13, 2016. Applicant received the FORM on January 29, 2016. Applicant submitted a timely response to the FORM. (Item 8) Department Counsel did not object to Applicant's submissions in her response to the FORM. (Item 9) On February 24, 2016, the FORM was forwarded to the Hearing Office and assigned to me on March 1, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Rulings on Evidence

Item 4 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. It is a summary of Applicant's Personal Subject Interview completed by the investigator conducting her background investigation on October 9, 2012. It is unsworn and unauthenticated. DOD Directive 5220.6, Enclosure 3, ¶ 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)). In her response to the FORM, Applicant indicated that she had no objection to the admission of Item 4. For this reason, Item 4 is admitted.

Findings of Fact

In her response to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a – 1.g, 1.k – 1.m, and 1.r. She denies the allegations in SOR ¶¶ 1.h – 1.j, 1.n – 1.q, and 1.s – 1.w. (Item 2)

Applicant is an employee of a DOD contractor seeking to maintain her security clearance. She has worked for her current employer since February 2012. Her highest educational achievement is a Master's degree. She has three children, who are now 22, 22, and 18. She married in April 2010, was separated in July 2014, and was divorced in June 2015. (Item 2; Item 3; Item 4 at 4)

On August 2, 2012, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). In response to Section 26 – Delinquency Involving Routine Accounts, Applicant listed several delinquent accounts. (Item 3, section 26) In the additional comments section, Applicant mentioned she has financial issues because she struggles as a mother trying to raise her three children. The father of her children did not pay child support which created an additional burden on her limited income. She mentioned that she filed for bankruptcy in 2005 and she continued to struggle to pay her debts. (Item 3, Additional Comments, at 42)

A subsequent background investigation revealed that Applicant filed for Chapter 7 bankruptcy in March 2005. Her debts were discharged by the bankruptcy court in August 2005. (SOR ¶ 1.c: Item 4 at 1; Item 5 at 5); Applicant filed for Chapter 13 bankruptcy in October 2014. The bankruptcy was dismissed in May 2015. (SOR ¶ 1.b: Item 7 at 1); and Applicant filed for bankruptcy under Chapter 7 in June 2015. (SOR ¶ 1.c: Item 7 at 1)

Delinquent accounts include: a \$10,741 federal tax debt owed to the Internal Revenue Service (IRS) for tax years 2013 and 2014 (SOR ¶ 1.d: Item 2 at 5); a \$557 county tax debt for 2015 personal property taxes (SOR ¶ 1.e: Item 2 at 5); a \$7,440 judgment filed against Applicant in 2010 (SOR ¶ 1.f: Item 5 at 5); an \$859 judgment filed against Applicant in 2008 (SOR ¶ 1.g: Item 5 at 5); a \$410 gym account placed for

collection (SOR ¶ 1.h: Item 5 at 7); and two cable television accounts placed for collection in the amounts of \$135 each (SOR ¶¶ 1.g, 1.t: Item 5 at 5; Item 6 at 2)

Additional delinquent accounts include: four medical accounts placed for collection in the amounts of \$29, \$104, \$113, and \$113 (SOR ¶¶ 1.j, 1.r, 1.u, and 1.v: Item 5 at 9, 12; Item 6 at 2); a \$423 charged-off account (SOR ¶ 1.k: Item 5 at 9); a \$1,109 department store account placed for collection (SOR ¶ 1.l: Item 5 at 10); a \$422 telephone account placed for collection (SOR ¶ 1.m: Item 5 at 10); four traffic ticket fines placed for collection in the amounts of \$250, \$300, \$205, and \$250 (SOR ¶¶ 1.n – 1.q: Item 5 at 11); a \$242 insurance debt placed for collection (SOR ¶ 1.s: Item 5 at 16); and a \$35 credit union debt placed for collection (SOR ¶ 1.w: Item 6 at 2).

During a personal subject interview on October 9, 2012, conducted by an investigator regarding her security clearance background investigation, Applicant admitted to incurring several delinquent accounts after her bankruptcy discharge in August 2005. The delinquent accounts included an automobile loan that she co-signed for a friend in 2008 to purchase a 2005 Jaguar. Her friend defaulted on the loan, and Applicant was responsible for the payments. The car was returned to the dealer. In June 2010, a court ordered her to pay \$75 a month towards the loan. (Item 4)

Applicant also discussed the delinquent accounts alleged in SOR ¶ 1.l, \$1,109; debts owed to her apartment association, which were paid prior to the SOR being issued; SOR ¶ 1.f, \$7,440; SOR ¶ 1.m, \$422; SOR ¶ 1.g, \$859; SOR ¶ 1.h, \$410; SOR ¶ 1.k, \$423; and ¶¶ 1.n – 1.q, \$250, \$300, \$205, and \$250. She did not recognize the debts alleged in SOR ¶¶ 1.g, 1.h and 1.k. She believed that they were discharged in her 2005 Chapter 7 bankruptcy. She does not recognize the debts alleged in SOR ¶¶ 1.n – 1.q. (Item 4)

Applicant said that her financial issues were caused by caring for her three children without receiving child support. She is capable of meeting her financial obligations and is attempting to resolve her debts in hopes that she can purchase a home in the future. She was unemployed from December 2011 to February 2012. (Item 4)

In her response to the SOR, dated November 16, 2015, Applicant indicated that her Chapter 7 bankruptcy filed in June 2015 was discharged by the bankruptcy court on October 5, 2015. She provided a copy of the bankruptcy court's "Discharge of Debtor." (Item 2, Answer to the SOR, Enclosure D) She initially filed for bankruptcy under Chapter 13, but her hours were decreased as well as her pay. She claims that she was no longer qualified for Chapter 13 and had to refile under Chapter 7. Her hours were reduced to 1,600 hours annually and her salary was adjusted to \$89,990. (Item 2, Answer to the SOR, Enclosure E) She did not provide complete copies of the Chapter 7 and Chapter 13 bankruptcy files.

Applicant provided proof that the father of her children is past due approximately \$42,000 in his child support obligations. (Item 2, Answer to the SOR, Enclosure F). As a

single mother, she worked two jobs and pursued her education. She earned an M.B.A. Her children are doing well. One child enlisted in the Air Force. Another child is a manager of a fast food restaurant and her youngest child is a freshman in college. (Item 2)

Applicant claims that the federal tax debt for tax year 2013 was the result of her husband's failure to pay taxes for that year, even though he agreed to pay the taxes. In addition, Applicant and her husband separated in July 2014. She lost the advantage of filing married. In 2014, she filed as married filing separately resulting in a tax debt of \$9,180. She intends to make payment arrangements to resolve this debt. She also intends to make payment arrangements regarding the \$557 personal property tax debt for tax year 2015 alleged in SOR ¶ 1.e. She claims the remaining debts are discharged under the Chapter 7 bankruptcy with the exception of the \$35 credit union debt placed for collection in SOR ¶ 1.f. She claims she has an active account with the credit union and it is in good standing. (Item 2; Answer to the SOR, Enclosure G)

Applicant disputed the debts alleged in SOR ¶¶ 1.h, 1.i, 1.j, 1.n-1.q; 1.r, 1.t, -1.v. She did not recognize these accounts. She did not formally dispute these debts, opting instead to file for bankruptcy. I find for Applicant with respect to the debts alleged in SOR ¶¶ 1.t and 1.v. The debt alleged in SOR ¶ 1.t is a duplicate of the debt alleged in SOR ¶ 1.i. The debt alleged in SOR ¶ 1.v is a duplicate of the debt alleged in SOR ¶ 1.u. I find for Applicant with respect to the debt alleged in SOR ¶ 1.w because Applicant provided proof that she is a member in good standing with the credit union and the credit report dated January 8, 2016, lists the debt as paid. (Item 2, enclosure G; Item 7 at 2)

In Applicant's response to the FORM, dated February 5, 2016, she provided documentation that she entered into an installment agreement to repay the federal tax debt on December 28, 2015. She agreed to pay \$150 per month and has made two payments on time. She did not provide proof of the payments. (Item 8 at 5-6) She provided proof that she completed a course on credit counseling in June 2015 and a course on personal financial management in July 2015, as a requirement for filing for Chapter 7 bankruptcy. (Item 8 at 12-16).

Applicant did not provide a complete copy of her 2015 Chapter 7 bankruptcy filing. She also did not provide current information on her net monthly income, monthly expenses, and her monthly financial obligations. The status of her current financial situation after the bankruptcy is unknown.

Applicant's student loans were not alleged in the SOR, but were discussed as matters affecting extenuation and mitigation. Applicant has approximately \$200,000 in student loans. The loans were in deferment and payments were to start in February 2016. (Item 7) On January 22, 2016, Applicant submitted an "Income Driven Repayment Plan" request pertaining to her student loans. Applicant claims the repayment began on February 28, 2016, with a monthly payment of \$25. (Item 8 at 8-11) She did not provide

a copy of the approved repayment agreement. It is also not clear whether the plan applies to all of her student loans or just one account.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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, 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 as to 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 the 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered financial problems which lead to a bankruptcy filing in 2005. After the discharge of her debts in 2005, she continued to have financial problems. This initially resulted in her filing for Chapter 13 bankruptcy in October 2014. The bankruptcy was dismissed in May 2015 after her hours and pay were cut. In June 2015, she filed for bankruptcy under Chapter 7. Her debts were discharged in October 2015. After the discharge, Applicant remained responsible for a federal tax debt in the approximate amount of \$10,741 for tax years 2013 and 2014. In addition to the federal tax debt, the SOR alleged 19 delinquent accounts incurred after Applicant’s 2005 bankruptcy discharge with a total balance of approximately \$13,000. Both AG ¶ 19(a) and AG ¶ 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving 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 her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

The Government’s substantial evidence and Applicant’s admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶

E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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).

AG ¶ 20(a) does not apply. Applicant has a long history of financial irresponsibility. Since 2005, she has filed for Chapter 7 bankruptcy on two occasions and Chapter 13 on one occasion, which indicates a failure to take responsibility for her financial obligations. Applicant was put on notice about many of these debts during her October 2012 background investigation interview. She did nothing to start resolving these debts until two years later when she filed for Chapter 13 bankruptcy in October 2014. While the majority of Applicant's debts were discharged in her recent Chapter 7 bankruptcy, she still owes the IRS over \$10,000 for tax years 2013 and 2014. Considering Applicant's lengthy history of financial irresponsibility, I am unable to conclude that her pattern of neglecting her financial obligations is unlikely to recur. While Applicant's debts were discharged in October 2015, it is too soon to conclude that Applicant has established a track record of financial responsibility.

AG ¶ 20(b) partially applies. Circumstances beyond Applicant's control contributed to her financial situation, to include a brief period of unemployment in late

2011 to early 2012; the lack of child support being paid by her children's father; a separation from her husband in 2014 and divorce in June 2015; and a reduction in her hours and pay in May 2015. However, most of the delinquent debts were incurred several years earlier before her Chapter 13 bankruptcy filing. Applicant's decision to file under Chapter 7 for a second time was a result of the reduction of her hours and pay. This reduced her annual income to \$89,990, which still is a respectable income. I cannot conclude Applicant acted responsibly under the circumstances because her neglect of her financial obligations occurred well before her 2012 background investigation interview. Even after the interview, having been put on notice that her delinquent finances were a concern, Applicant did nothing to resolve her delinquent accounts even though it appears her income was sufficient to take some action.

AG ¶ 20(c) partially applies because Applicant attended financial counseling in conjunction with her Chapter 7 bankruptcy filing and the majority of her delinquent accounts were discharged in the 2015 Chapter 7 bankruptcy. She recently entered a repayment plan regarding the \$10,000 federal income tax debt. Even though she claims she made two payments towards the agreement, it is too soon to conclude that she will continue to make timely and regular payments towards the tax debt. In addition, the deferment period of Applicant's approximately \$200,000 in student loans ended in February 2016. Applicant provided no information regarding her current budget and income. I cannot conclude that she is capable of making the payments under the federal tax debt repayment plan as well as meet her other financial obligations. For this reason, AG ¶ 20(c) is given less weight.

AG ¶ 20(d) partially applies to the federal income tax debt and the debt alleged in SOR ¶ 1.w. However, I cannot conclude that Applicant made a good-faith effort to resolve her remaining delinquent accounts. Made aware of the delinquent accounts in October 2012, Applicant did nothing to resolve these accounts until she filed for Chapter 13 bankruptcy in October 2014, eventually converting to Chapter 7 in 2015. While filing for bankruptcy is a legal means to dismiss one debt, it cannot be considered a good-faith effort to repay or resolve one's debts to overdue creditors.

AG ¶ 20(e) does not apply. Although Applicant disputed 11 debts alleged in the SOR, she did not take steps to formally dispute these debts, opting instead to file for bankruptcy. She was not proactive in following up to resolve her disputes. For this reason, AG ¶ 20(e) does not apply.

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.

I considered the fact that Applicant raised her three children without child support. I considered that Applicant went to school while raising her three children, ultimately obtaining a Master's degree. I considered Applicant's years of service with her employer.

In requesting an administrative determination, Applicant chose to rely on the written record. However, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts that would mitigate financial considerations security concerns. While the majority of Applicant's accounts were discharged by the bankruptcy court in October 2015, this was her second bankruptcy discharge in 10 years. Prior to filing for bankruptcy, Applicant did not take action towards resolving these accounts, such as entering into a repayment agreement with each creditor or formally disputing accounts with the credit bureaus, even though she was made aware of these delinquent debts during her background investigation interview in October 2012.

Applicant did not provide complete copies of her bankruptcy paperwork. She also did not provide information about her current income and monthly expenses. I cannot determine whether Applicant has sufficient income to meet her financial obligations. For this reason, I cannot conclude that Applicant is able to develop a track record of financial rehabilitation. Applicant did not mitigate the concerns arising from financial considerations.

The determination of an individual's eligibility for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating to the evidence presented. Under Applicant's current circumstances, the granting of a security clearance is not warranted. In the future, if Applicant takes proactive steps towards resolving her delinquent tax debt and establishes a track record of current payments towards all of her financial obligations, she may demonstrate persuasive evidence of her security worthiness.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In the future, she may be able to demonstrate a track record of financial responsibility. Based on Applicant's history of

financial irresponsibility, it is too soon to make that conclusion at this point. The security concerns raised under financial considerations are not mitigated.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.s, 1.u: | Against Applicant |
| Subparagraphs 1.t, 1.v, 1.w: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge