



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



In the matter of:)
)
) ISCR Case No. 14-03289
)
Applicant for Security Clearance)

Appearances

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

03/19/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On October 11, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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 DOD on September 1, 2006.

Applicant answered the SOR on November 13, 2014, and requested a hearing before an administrative judge. The case was assigned to me on January 3, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 22, 2015. I convened the hearing as scheduled on February 10, 2015. The Government

offered exhibits (GE) 1 through 4 which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through F, which were admitted into evidence without objection. The record was held open until February 24, 2015, to allow Applicant to submit additional documents. She submitted AE G through M, which were admitted without objection and the record closed.¹ DOHA received the hearing transcript (Tr.) on February 19, 2015.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.h. She denied SOR ¶¶ 1.i and 1.j. Her admissions were incorporated in the findings of fact. After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 43 years old. She served on active duty in the military from 1989 to 1993 and was in the reserves from 1993 to 1997. She was honorably discharged. She attended community college from August 1998 to May 2001 and a four-year institution from August 2001 to July 2005. She earned a bachelor's degree in May 2003 and her master's degree in July 2005. She again attended college in January 2006 intending to work on a Ph.D. She discontinued her courses in May 2006. She again attended college classes from January 2010 to July 2010 in pursuit of another master's degree.²

Applicant has worked for a federal contractor from December 2007 to the present. She also began working part-time one day a week for another company in July 2012. Her full-time employer is aware of her part-time employment. She worked as a paid intern for a company from May 2007 to November 2007. She worked from August 2005 to May 2007 in a part-time position as an adjunct instructor at a college. She was employed from December 2005 to January 2007 in a full-time position. From August 2003 to July 2005, she worked in a part-time position as a graduate assistant and from July 2003 to July 2004 she also worked in a part-time position. From May 2001 to August 2003, she did not work, presumably because she was attending college.³

Applicant was married from 1990 to 2001. She has two children, ages 24 and 20. Applicant did not provide a complete copy of her divorce decree, but only provided pages 1 and 5. It appears the decree is from 2001. Page 5 includes a child support provision. It acknowledged Applicant was a full-time student at the time. It stated that based on Applicant's testimony and her prior work experience, she was about to be gainfully employed and the court imputed the sum of \$1,473 per month as reasonable income to be earned by her. Based upon that determination the court ordered Applicant to pay \$368.94 per month in child support beginning in September 2001.⁴ Applicant

¹ Hearing Exhibit I is a memorandum from Department Counsel forwarding Applicant's exhibits and noting he had no objections.

² Tr. 49-53, 63-66.

³ GE 1.

⁴ Based on information provided in GE 1, it appears Applicant was a full-time student in 2001.

provided copies from the state's child support enforcement division showing her payments from approximately 2002 to 2015. There were months she made the complete payment, months she made payments more than the amount ordered, months she made payments less than ordered, months she did not make a payment, and months where she made a large lump-sum payment.⁵

Applicant testified that her ex-husband sought a modification to the child support payments in 2008. The child support order was modified in September 2010. Her ex-husband was awarded a judgment against her in the amount of \$20,000 for a retroactive child support increase. He was also awarded a judgment of \$10,000 in child support arrearages. Applicant was ordered to make a lump-sum payment of \$10,000 during or before December 2010, which she did. She was ordered to make a second lump-sum payment of \$10,000 during or before March 2011. It appears she made a lump-sum payment of \$3,000 in April 2011. It is unknown if she satisfied the remaining \$7,000 owed. She was then required to make monthly payments of \$200 beginning in January 2011 and to continue until the amount was paid. Applicant did not provide a copy of the complete child support order, but an "income withholding" order was included and it shows that \$799 per month was to be deducted from Applicant's pay. She currently makes monthly payments of \$920 that are automatically deducted from her pay. Presumably some of this amount is for arrearages.⁶

SOR ¶ 1.a (\$25,851) is a private loan Applicant obtained to attend school in 2010. The original loan was for approximately \$13,000. She was required to begin repaying the loan after she completed her courses later in 2010. She does not recall how much she was to pay each month. She did not make arrangements with the original creditor to repay the loan when it was due. Her brother became ill at some point. She was unaware the debt was sold to a collection law firm until she retrieved a copy of her credit report in December 2012. In her interview with an Office of Personnel Management (OPM) investigator on February 17, 2013, she indicated she planned to contact the new creditor and resolve the debt. In her answer to the SOR in November 2014, she indicated she attempted to establish a payment agreement with the creditor, but the monthly payments were unaffordable. At her hearing, she provided a document to show she made a \$50 payment in February 2015 and arranged to make another \$50 payment in March 2015. She testified that the creditor told her to start making some payments until they could reach an agreement. Applicant lists on her personal financial statement that the balance of this loan is now \$29,000.⁷

The debts in SOR ¶¶ 1.b through 1.h are for student loans to the same creditor, totaling approximately \$41,625. Applicant testified that during a period of unemployment or underemployment she had the loans placed in forbearance. She was uncertain of the exact date the forbearance became effective, but believed it was around 2006. She

⁵ AE L.

⁶ Tr. 88-94; GE 2; AE I, L.

⁷ Tr. 22-34; GE 2, 3, 4; AE B, G, M; Answer to SOR.

testified that she was unaware the loans were in default. She believed they were still in forbearance, and she intended to continue going to college. There is evidence she made an initial payment of \$486 in April 2012, two payments in May 2012, consecutive monthly payments from June 2012 until February 2013, and one final payment in May 2013. She paid a total of \$6,318. She provided a statement from September 2014 that shows a balance of \$41,902.⁸ In her OPM interview in February 2013, she indicated she planned to make payments to resolve her debts.⁹

Applicant began a rehabilitation program in August 2014, with the student loan creditor (SOR ¶¶ 1.b through 1.h) and pays \$5 a month. She is required to make nine consecutive monthly payments and then a new repayment plan will be made. Applicant stated that when she went back to school in 2010 she contacted her student loan creditor to determine the status of these loans. She stated that her new school was required to tell her student loan creditors that she was enrolled in school. She stated the school failed to do so, and her loans went into a default status. There is evidence that shows Appellant began making payments on the student loans in SOR ¶¶ 1.b through 1.h in 2012 and then stopped the payments in 2013.¹⁰

In addition to the above listed student loans, Applicant's credit report shows other student loans owed to another creditor, totaling \$8,295.¹¹ It appears the loans are from 2000 and 2001. Payments for these loans were being garnished. Applicant believed the garnishment may have started in 2012. She was uncertain of the amount of the monthly garnishment. She believed it was included as one amount on her pay stub, which also included her child support payment. After the hearing, she provided documents to show she has paid \$5,080 through garnishment on these loans. She testified that on February 8, 2015, she made a payment of \$636 toward the debt, so that it would be removed from garnishment status. She intends to make monthly payments of \$549 toward the balance. Applicant believed she made \$70 payments towards these debts for 14 months. She did not provide documentary proof or explain if this was part of the garnishment. She did not provide documentary proof of the \$636 payment, but did provide an account summary dated February 9, 2015, that showed her current balance owed was \$5,730, and she had arranged a monthly recurring payment of \$549 to begin on March 8, 2015. She stated she is working with her credit union to find proof that earlier payments were made to the creditor, who does not have a record of the payments.¹²

⁸ It is likely that balance has increased since Applicant's last payment, due to interest.

⁹ Tr. 34-39, 49-63, 71; AE H.

¹⁰ Tr. 34-39, 49-63, 71; GE 2; AE C.

¹¹ AE E.

¹² Tr. 40-48, 67-71, 96-104; GE 2, 3, 4; AE E. These loans and history of child support payments are not alleged and will not be considered for disqualifying purposes. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in the SOR may be considered. They are: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of

The debt in SOR ¶ 1.i (\$127) was paid in September 2014. The debt in SOR ¶ 1.j (\$265) was an error in billing. Applicant provided documents to verify both debts are resolved.¹³

In 2010 Applicant helped her brother who was homeless, an alcoholic, and diagnosed with cancer. She helped care for him for about a year, but he became unruly, and he chose to remain homeless. She bought him clothes and other necessities. She helped get him to his appointments. He passed away in 2013. Applicant, along with her other siblings, are helping to care for their mother who has dementia. She and her siblings share some of her expenses. Her budget shows she contributes \$50 a month.¹⁴

Applicant estimated her annual salary was about \$60,000 when she began working for her current employer in 2007. Her current annual salary is \$99,000. It is unknown how much she earns from her part-time job. Applicant indicated in her response to interrogatories in September 2014, and her answer to the SOR that she went to a credit counseling service and had a debt management and budgeting session. She stated that her goal was to reduce her expenses to make her monthly payments fit her budget. Applicant provided a copy of a budget, a personal financial statement, and her leave and earning statement from her current employer. Applicant's budget does not appear to include income from her part-time job.¹⁵

Applicant provided documents to show her academic and professional achievements. She was awarded the Army Achievement Medal in 1992. She provided a performance evaluation from her employer from 2014 showing that her overall performance rating exceeded commitments. She provided character letters from family and friends. She is described as capable, professional, valuable, honest, trustworthy, and dependable. She has an excellent work ethic, integrity, and is an invaluable team member.¹⁶

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.

extenuation, mitigation, or changed circumstances; (c) to consider an applicant has demonstrated rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3.

¹³ Tr. 20-23, 39; AE A and D.

¹⁴ Tr. 79-88.

¹⁵ Tr. 56-59; AE G, J, M.

¹⁶ AE F.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 and 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 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant defaulted on student loans that are in collection status (SOR ¶¶ 1.a through 1.h) totaling approximately \$67,476 as alleged. Applicant lists the loan in SOR ¶ 1.a. on her personal financial statement as now reflecting a balance of \$29,000 (an increase of \$3,149). I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant began incurring student loan debt in at least 2000. She indicated the loans in SOR ¶¶ 1.b through 1.h were in forbearance at one time, but she did not provide documents to show when they were put in forbearance and when she defaulted on them. Applicant completed her master's degree in 2005. She attended college again in 2006, but dropped out after a semester. She began her full-time employment with her current employer in December 2007. Before then, she was employed from December 2005 to January 2007 in a full-time position.

Applicant admitted she did not make any payments on the loan in SOR ¶ 1.a incurred in 2010, until a \$50 payment in February 2015. She made 13 payments from April 2012 to May 2013 toward the student loans in SOR ¶¶ 1.b through 1.h and then stopped. No explanation was provided why she stopped making payments. Applicant signed her security clearance application in January 2013. She was interviewed by an OPM investigator in February 2013. She was aware of the Government's concerns about her delinquent student loans. Despite those concerns, she stopped making payments and did not make any other payments until she made a \$5 payment, presumably in August 2014, as part of a rehabilitation plan. After nine consecutive payments a new payment plan will be instituted. Applicant has other student loans that were not alleged and were being paid through garnishment. She made an arrangement to make monthly payments of \$569 beginning in March 2015.

Applicant testified she cared for her ill brother, is helping her mother and is paying child support. Caring for her ill brother and mother are conditions beyond her control. I find AG ¶ 20(b) applies to these facts. Being responsible for child support is not beyond her control. Although her child support payments were modified, it appears it occurred after she started her current job in 2007. Presumably the court took all matters into consideration and made a just modification based on all of the facts. AG ¶ 20(b) does not apply to the child support order. For the full application of the mitigating condition, Applicant must have acted responsibly under the circumstances. Applicant failed to provide sufficient evidence to show why she neglected to make consistent payments on her student loans when she was gainfully employed. I find she did not act responsibly toward paying her delinquent student loans. AG ¶ 20(b) only partially applies.

There is evidence Applicant received financial counseling and established a budget. AG ¶ 20(c) applies to those facts. She did not include her income from a part-time position she listed on her SCA. She made 13 payments on some of her delinquent student loans in 2012 and 2013, but then stopped. These were good-faith payments. She paid the debt in SOR ¶ 1.i and resolved the debt in ¶ 1.j. AG ¶ 20(d) applies to the 13 payments and to the debts in SOR ¶¶ 1.i and 1.j.

Although Applicant is participating in a rehabilitation plan on her loans in SOR ¶¶ 1.b through 1.h, where she makes monthly payments of \$5, she has not completed the plan. Based on her history of non-payments or inconsistent payments over the years, I am not convinced that Applicant's financial problems are under control or that there are clear indications the problem is being resolved. Applicant has been gainfully employed and earning a significant salary since at least 2007. She stopped attending college in 2006. Even if her student loans were in forbearance for a period, she had a duty to contact her creditors and begin making payments when she was working and not attending school. In 2010 she took out more student loans to attend college and indicated it was the school's responsibility to notify her other student loan creditors to ensure her older loans would not be put in default status. At that juncture, Applicant had not yet made any payments toward other owed loans. In addition, Applicant had loans not alleged that were being paid through garnishment. She has since made

arrangements on those loans to be brought out of garnishment and arranged a payment plan. AG ¶¶ 20(c) and 20(d) do not apply, except as stated above.

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.

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 potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 43 years old. She served honorably in the military. She earned bachelor's and master's degrees. She provided help to her ill brother and ailing mother. She has been employed full-time in her current position since December 2007. Applicant has child support obligations. She received a good performance evaluation in 2014. Applicant has three separate student loans that she did not address responsibly. She failed to consistently pay the student loans she owed in SOR ¶¶ 1.b through 1.h, which now have a balance of approximately \$41,902. Her monthly payments are only \$5 on these loans. Once she completes the rehabilitation program she will have to actually start paying the loans. The loan in SOR ¶ 1.a, incurred in 2010, now has a balance of \$29,000. She ignored that loan until she made a \$50 payment in February 2015. Her other student loans that were not alleged were being paid through garnishment until Applicant recently arranged a payment plan. There is some mitigation, as addressed above, but what is lacking is a meaningful consistent track record of Applicant earnestly and responsibly paying her student loans. Without such, her financial issues remain a security concern.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Subparagraphs 1.i-1.j:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge