



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



In the matter of:)
)
) ISCR Case No. 17-03843
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2019

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial security concerns over her delinquent debts, including past-due state and federal income taxes, student loans, and other debts. Applicant’s eligibility for continued access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 26, 2015. On December 8, 2017, 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.¹

¹ DOD CAF took this action under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on January 5, 2018, and requested a hearing. The case was assigned to me on June 27, 2018. On August 7, 2018, a Notice of Hearing was issued scheduling the hearing for September 6, 2018. The hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection.²

At the end of the hearing, the Government moved to amend the SOR by adding a new allegation based on Applicant's testimony. The motion was granted. I held the record open until October 8, 2018, to allow Applicant to submit additional documentation. On October 1, 2018. Applicant submitted one document, which was marked as AE H and admitted without objection. No additional documents were received by the time the record closed. The transcript was received on September 14, 2018.

Amendment to the SOR

Based on Applicant's testimony, pursuant to DOD Directive ¶ E3.1.17, the Government moved to amend the SOR to add the following allegation:

- 1.u. You are indebted to the IRS for past-due taxes in the approximate amount of \$6,000.³

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.c - 1.e, 1.g, 1.h, 1.l - 1.o, and she denied SOR ¶¶ 1.b, 1.f, 1.i, 1.j, 1.k, and 1.p - 1.t. She admitted SOR ¶ 1.u during her hearing testimony. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 46 years old. She was married from 1997 to 2011. She has two children: a daughter, age 19, and a son, age 17. Both children live at home with her. Her daughter attends junior college and her son is a high school senior. Applicant remarried in May 2015 and divorced a year later, in February 2017. (Tr. 29-31; 91; AE D; GE 1)

Applicant served in the U.S. Army from 1997 to 1999. She was discharged honorably after she became pregnant with her first child. (Tr. 36; GE 1) She has earned a bachelor's degree, and has had subsequent schooling. (Tr. 35-36)

² AE A through AE C were attached to Applicant's Answer.

³ Tr. 47, 101-103. The motion was granted without objection. During the hearing, I erroneously referenced the new allegation as "SOR ¶ 1.m," instead of by what came next in the sequence (SOR ¶ 1.u) as it is identified here.

Applicant has held a security clearance since 2004. She worked for defense contractor B from 2004 until November 2012. She then took a new contractor position, where she worked until she was furloughed, in July 2013. Over the next five years, she was employed from September 2013 to January 2014; laid off and unemployed until March 2014; employed again until November 2016; and laid off and unemployed until January 2017. Since then, she has been employed as a software developer for her current employer and clearance sponsor. She earns \$100,000 annually. (Tr. 36-41, 94-95; GE 1; AE D)

Applicant enrolled her children into private school from about 2011 to 2013, because they were being bullied in public school. (Tr. 92-94; AE D) In 2012, after leaving her job with defense contractor B, Applicant cashed out her 401(k), taking out about \$25,000. She used the 401(k) money to finance her children's tuition and to pay off several consumer debts. (Tr. 44-45) After 2013, Applicant returned her children to public school after she moved. She also was not able to afford private tuition. (Tr. 93)

Applicant was not aware that an early withdrawal from her 401(k) caused tax consequences, so she did not pay taxes on that income at the time. SOR ¶ 1.a is a state tax lien issued in 2016 for \$5,904. When Applicant learned of the tax debt, she contacted tax authorities and attempted to repay it, but she stopped making payments after she was laid off in late 2016. (Tr. 34, 43-45, 52) She did not make further repayment efforts until after the SOR. (Tr. 34, 52-53)

AE F reflects payment plans for two state tax debts. One is for Applicant and her former spouse, though Applicant is responsible for it. Applicant is to pay about \$67 a month for 12 months (on one \$765 state tax debt). Under the second plan, Applicant is to pay \$184 a month for 36 months (on another state tax debt, of about \$6,000). The repayment agreements are in place as of August 15, 2018, but no evidence of payments was submitted. (Tr. 53-55; AE F)

In 2017, Applicant also learned that she owed federal taxes as a result of her early 401(k) withdrawal. She testified that she owed about \$12,000 in federal income taxes. She said the IRS has kept about \$6,000 of her federal refunds to resolve this debt. She has about \$6,000 left to pay. (Tr. 44, 47-49) (SOR ¶ 1.u) Applicant did not provide any documentation to corroborate her testimony. She has not taken any other steps to repay her federal tax debt.

Applicant asserted that the credit reports (GE 2, GE 3) contain incorrect information and that many of her debts are resolved, either because they are now in good standing, or because they no longer appear on her credit reports. (AE D) She said she contacted the credit bureaus to address the errors and dispute them. (Tr. 13, 32, 107) She provided more recent credit reports which do not show all of the debts alleged. (AE A; AE G)

SOR ¶ 1.b is a 2012 judgment against Applicant in favor of creditor M, a collection agency, for \$1,577. (GE 2 at 3; GE 3 at 3) Applicant asserted that the debt is

the same as SOR ¶ 1.s (\$1,897), a past-due credit card account issued by Bank C and reported to collection agency M. (GE 3 at 12) Applicant denied both debts because they are no longer listed on her credit reports. (AE A; AE G) She also said she never had a credit card with Bank C. (Tr. 55-62)

SOR ¶¶ 1.c (\$21,261), 1.d (\$9,112), 1.e (\$9,915), 1.l (\$19,398), 1.m (\$12,931), 1.n (\$9,372), and 1.o (\$2,835) are past-due private student loan debts. As alleged, they total about \$85,000. However, they are based on two separate credit reports, and some are duplicates. SOR ¶¶ 1.c and 1.e are the same debt. They are to the same creditor, were both opened in October 2011, and have almost identical account numbers. (GE 2 at 4) SOR ¶ 1.l (listed on GE 3 at 3) is also a duplicate of debt ¶ 1.c.

Applicant's student loans were deferred for several years. They became delinquent during her divorce (2011-2012), though she only learned this later. (Tr. 33, 63) She consolidated most of her student loans in 2015. (AE C; AE E) She documented that four of her loans (totaling about \$34,600) were consolidated and "paid in full" by the U. S. Department of Education in 2015. (AE E) Applicant acknowledged that she still has to repay the loans, but now owes the federal government instead of private lenders. Applicant believes she owes between \$40,000 and \$60,000 overall. (Tr. 63-72)

All but one of Applicant's student loans are again in deferment. She neglected to include one of her private loans (it is not clear which one) in consolidation. She intends to keep her student loans in deferment while her children are in school. She hopes to begin repayment in 2019 or 2020. (Tr. 69-74)

SOR ¶ 1.f (\$3,242) is a charged-off debt relating to an old computer purchase. SOR ¶ 1.q (\$1,714) is the same debt. The account numbers are the same, the creditors have the same initials and the two accounts are listed on separate credit reports. (GE 2 at 4; GE 3 at 5) Applicant acknowledged that one of the debts is valid. She contacted the creditor to try to settle the debt, and intends to pay it. (Tr. 75-77) SOR ¶ 1.q is a duplicate, but SOR ¶ 1.f remains unresolved.

SOR ¶ 1.g (\$68) is a charged-off debt to a credit union at a military base where Applicant used to work, from 2009 to 2013. It remains listed on her credit reports and is unpaid. (GE 2 at 4; AE A at 34; AE G at 1-2). Applicant intends to pay it. (Tr. 76-78)

SOR ¶¶ 1.h (\$1,059) and 1.t (\$1,081) are the same debt. The bank, the collection agency, and the account numbers are the same. (GE 2; GE 3; Tr. 78-82). SOR ¶ 1.t is a duplicate, but SOR ¶ 1.h remains unresolved.

SOR ¶ 1.i (\$1,029) is a debt placed in collection by a bank. It became delinquent in about 2010. Applicant believes it has been paid. Applicant recently disputed the debt with credit bureaus. (Tr. 79-83; GE 2 at 11) She provided no corroborating documentation. The account remains unresolved.

SOR ¶ 1.j (\$695) is an old, past-due utility bill, incurred when Applicant lived in another state during her first marriage. (GE 2 at 11) Applicant disputed it with the creditor, and asserts that it was removed from her credit report. (Tr. 82-87) She provided no corroborating documentation. The account remains unresolved.

SOR ¶ 1.k (\$185) is a past-due debt to a cable company. (GE 2 at 11) Applicant said it is an old bill and that it has been paid. She said she contacted the cable company for verification. (Tr. 85-87) She provided no corroborating documentation. The account remains unresolved.

SOR ¶ 1.p (\$1,824) is a past-due debt owed to a department store. Applicant denied the debt, which has been pending since 2010. She intends to pay it, but it remains unresolved. (Tr. 88; GE 3 at 5)

SOR ¶ 1.r (\$1,509) is a past-due credit card account issued by a large hardware store. (GE 3 at 5). It has been pending since 2010. Applicant intends to pay it. (Tr. 89)

Applicant declared several delinquent debts on her SCA, in 2015, noting that many were due to her first divorce. She did little to try to resolve them until she received the SOR. This was due, in part, to her somewhat sporadic employment situation, but she also acknowledged that she did not pay attention to her finances. (Tr. 95-98; GE 1; AE D) Currently, Applicant is living paycheck-to-paycheck. She has little money saved. She pays \$1,575 in rent. She bought a used car in 2017. She pays for some of her daughter's college expenses. (Tr. 49-52)

Applicant began a credit counseling program two months before the hearing. She learned about a well-known credit counselor's "snowball" method of repayment (paying the smallest debt first, then the next smallest, and so on). She intends to address her debts one by one in this way, while also paying her tax debts, and then addressing her student loans at a later date. She also has learned how to keep a monthly budget. (Tr. 88-90, 95-96, 108)

A co-worker and supervisor who hired Applicant for her current job attests that Applicant is a knowledgeable professional. She is also honest, trustworthy, hard-working, and loyal. She maintains confidentiality and has been entrusted to maintain access to sensitive information without issues. (AE H)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."⁴

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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(a), 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 national security eligibility will be resolved in favor of the 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.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) . . . failure to pay annual Federal, state, or local income tax as required.

Applicant incurred numerous delinquent debts, including state and federal income taxes, student loans, and other debts, as established by the credit reports in evidence. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(f) also applies to Applicant's tax debt. SOR ¶¶ 1.e, 1.l, 1.q, and 1.t are duplicates of other debts in the record. They are not established.⁵ Applicant did not establish that SOR ¶¶ 1.b and 1.s are the same debt.

Applicant was unwilling to pay many of her old debts because they were no longer listed on her credit reports. The mere fact that a debt is no longer listed on a recent credit does not establish that it is resolved, is no longer valid, or that Applicant is no longer responsible for it.⁶ AG ¶ 19(b) is also established.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. 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

⁵ When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice).

⁶ ISCR Case No. 14-003612 at 3 (App. Bd. Aug. 25, 2015)

downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts are due, in part, to conditions beyond her control, including her first divorce and occasional periods of unemployment in the last five years. The first prong of AG ¶ 20(b) therefore applies. However, for full credit, Applicant must show reasonable action under the circumstances.

Applicant has significant unpaid student loans. She consolidated most of them several years ago, and they are no longer delinquent, since they are again deferred. However, their deferred status does not bar me from considering that Applicant has made no real effort to pay them over the years, and has no specific repayment plan in place now. I cannot consider them resolved.

Applicant began to address her debts only when she received the SOR. The DOHA Appeal Board has repeatedly held that the timing of an applicant's efforts to resolve debts is a relevant consideration. An applicant who resolves financial problems only when her clearance might be imperiled raises questions about her willingness to follow the rules governing classified information when her personal interests are not at stake.⁷

Applicant's recent income was impacted by her somewhat sporadic employment. However, she now earns a \$100,000 annual salary. She has not shown that even the smallest of her debts have been paid. Her plan is to pay her smallest debts first, along with her taxes, and then to address her student loans. This is a reasonable plan. However, she has not taken sufficient steps towards implementing that plan to establish mitigation under AG ¶ 20(b) or AG ¶ 20(d). Similarly, Applicant has only recently participated in credit counseling, and she has not shown that her debts are in control or are being resolved. AG ¶ 20(c) does not fully apply.

⁷ ISCR Case No. 16-03187 at 4 (App. Bd. Aug. 1, 2018); ISCR Case No. 14-03358 at 4 (App. Bd. Oct. 9, 2015)

Applicant's reliance on the fact that several of her debts are no longer listed on her credit reports is not sufficient to establish that they are no longer valid, have been resolved, or that she has a basis to dispute them. AG ¶ 20(e) does not apply. Even though many of Applicant's debts are old, they are also ongoing. She did not establish that her debts occurred under circumstances that are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant incurred unforeseen tax debt after she made early withdrawals from her 401(k) to make ends meet during employment instability and to finance her children's private school education for about two years, which she felt necessary for their well-being. She has a payment plan for her state tax debt, SOR ¶ 1.a, but did not document any payments towards it. She provided no documents to corroborate her testimony that SOR ¶ 1 u, her federal tax debt, is being resolved. She also has no payment plan in place to resolve that debt by means other than the IRS's recapturing her tax refunds. AG ¶ 20(g) does not fully 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

Applicant's debts occurred, in part, due to conditions beyond her control. However, she only began to address her debts recently, and has not established a sufficient track record of steady payments, reasonable action, or financial stability to warrant a finding that the security concern over her debts is mitigated. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant continued eligibility for access to classified information. Eligibility for continued access to classified information is denied.

Braden M. Murphy
Administrative Judge