



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



In the matter of:)
)
) ISCR Case No. 18-00324
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 9, 2018, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on July 26, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 1, 2018. She responded to the FORM with documents that I have marked Applicant's Exhibits (AE) A

through F.¹ The case was assigned to me on December 12, 2018. The Government exhibits included in the FORM and AE A through F are admitted in evidence without objection.

On January 28, 2019, I notified Applicant that I would reopen the record if she wanted to submit additional documentary evidence. I reopened the record upon her request. She submitted documents that I have marked AE G through J and admitted without objection.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. She has worked for her current employer since 2017. She attended college for a period, but she has not earned a degree. She is the single mother of two minor children.²

Applicant has a history of financial problems, which are attributed primarily to unemployment, underemployment, her children's significant medical problems, and the costs associated with being a single mother of two children without meaningful support from the children's father. She filed a Chapter 7 bankruptcy case in 2005, and her debts were discharged in 2006.³

The SOR alleges 41 delinquent debts, including 28 medical debts and 13 miscellaneous debts. However, the debts alleged in SOR ¶¶ 1.a and 1.v; 1.c and 1.p; and 1.d, 1.t, and 1.u are duplicate accounts. There are 27 non-duplicate medical debts and 10 non-duplicate miscellaneous debts. The debts are listed on a February 2016 credit report, an October 2017 credit report, or both credit reports.⁴

The ten non-duplicate miscellaneous debts total about \$4,350 and include debts to telecommunications companies (SOR ¶¶ 1.a-\$1,058; 1.d-\$435; and 1.bb-\$371); banks (SOR ¶¶ 1.b-\$694; and 1.f-\$366); a public utility (SOR ¶ 1.i-\$938); a returned check (SOR ¶ 1.hh-\$60); a toll bridge (SOR ¶ 1.oo-\$54); and two retail accounts (SOR ¶¶ 1.cc-\$165; and 1.gg-\$212).

Applicant contracted with a debt-settlement company in January 2018. She enrolled four debts totaling \$6,675 in the company's debt-settlement program (DSP), including the debt alleged in SOR ¶ 1.a. The three additional debts are owed to two financial institutions (\$2,075 and \$1,200) and a hospital (\$2,500). It is difficult to ascribe the three debts to any of the debts alleged in the SOR, although the hospital debt could

¹ AE F is a copy of the Government's FORM.

² Items 4, 5; AE A.

³ Items 2, 5, 8, 9; AE A, C.

⁴ Items 6, 7.

be connected to one or more SOR debts. The DSP documentation called for Applicant to pay \$252 per month for 18 months, plus \$59 per month in fees.⁵

Applicant admitted owing the non-duplicate miscellaneous debts alleged in SOR ¶¶ 1.a, 1.b, 1.f, and 1.bb. She wrote in her response to the SOR for all four debts: “I have made payment arrangements with a debt consolidation company.” She wrote In her response to the FORM:

I finally landed a full time position last year. Since working full time I was able to move into my own apartment. I have been trying desperately to pay off my debts and maintain a household for me and my children. Many of the debt[s] in question ha[ve] already been paid. Some of which are no longer on my credit reports. I also contacted a debt consolidation company to work out a payment plan. . . . I will continue to work on paying off all of my debt as quickly as possible.

Applicant provided credit reports with her response to the SOR and FORM, but no actual proof of payments. I reopened the record for her to submit additional documentation. She responded that she was no longer working with the debt-settlement company because it was too much money. On January 29, 2019, she retained a law firm to repair her credit and dispute inaccurate items on her credit report. She stated that she is paying the law firm \$109 per month. She also documented that on February 27, 2019, she paid the \$435 debt to the telecommunications company (SOR ¶ 1.d).⁶

Applicant admitted owing the \$938 public utilities debt alleged in SOR ¶ 1.i, but she wrote that she was “currently making payments to [the utility company] on this account.” The debt was reported by Experian on the February 2016 combined credit report, but it is not listed on the February 2018 Experian credit report.⁷

Applicant denied owing the non-duplicate miscellaneous debts alleged in SOR ¶¶ 1.cc, 1.gg, 1.hh, and 1.oo. She stated that she was unaware of the \$165 debt alleged in SOR ¶ 1.cc. The debt was reported by Equifax on the February 2016 combined credit report, but it is not listed on the October 2017 Equifax credit report, nor any other credit report.⁸

Applicant stated that she paid the \$212 debt alleged in SOR ¶ 1.gg. The debt was reported with a \$212 balance on the February 2016 combined credit report. The February 2018 Experian credit report and the March 2018 TransUnion credit report, which were submitted by Applicant, also report the account with a \$212 balance.⁹

⁵ Items 2, 3.

⁶ Items 2, 3; AE E, G-J.

⁷ Items 2, 3, 6, 7: AE E.

⁸ Items 2, 3, 6, 7; AE E.

⁹ Items 2, 3, 6; AE E.

Applicant denied owing the \$60 debt for a returned check (SOR ¶ 1.hh). She stated that her credit union was hacked during the time the check was being processed. The debt was reported by Experian on the February 2016 combined credit report and on the three credit reports from February and March 2018. On July 18, 2018, she sent a letter to the creditor requesting verification of the account and deletion from her credit report if not verified. No additional information on its status was provided.¹⁰

Applicant stated that she paid the \$54 debt for a toll bridge (SOR ¶ 1.oo). The debt was reported by TransUnion on the February 2016 combined credit report. It is not reported on any subsequent report.¹¹

Applicant admitted owing some of the medical debts, while denying owing the rest. Some of the debts have been removed from her credit report, but there is no other evidence that any of the medical debts have been paid.¹²

Credit reports indicate that Applicant paid or settled a \$188 debt and a \$402 debt that were not alleged in the SOR. The February 2016 credit report lists a \$19,671 deferred student loan. The balance had increased to \$26,966 on the October 2017 credit report. The loan is reported in March 2018 as deferred with a \$27,366 balance. The deferment was scheduled to end in May 2018.¹³

Policies

This case is adjudicated under Executive Order (EO) 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 the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

¹⁰ Items 2, 3, 6; AE B, E.

¹¹ Items 2, 3, 6, 7; AE E.

¹² Items 2, 3, 6, 7; AE D, E.

¹³ Items 3, 6-8. AE E, J. The SOR appropriately did not allege the deferred student loan nor the two paid collection debts. The student loan will be considered in assessing Applicant's overall financial situation. The paid collection accounts are matters in mitigation.

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.”

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 the applicant or proven by Department Counsel.” The applicant 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 EO 10865 provides that adverse 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 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 notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

The debts alleged in SOR ¶¶ 1.a and 1.v; 1.c and 1.p; and 1.d, 1.t, and 1.u are duplicate accounts. 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). SOR ¶¶ 1.v, 1.p, 1.t, and 1.u are concluded for Applicant.

Conditions that could mitigate the 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 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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant attributes her financial problems primarily to unemployment, underemployment, her children's significant medical problems, and the costs associated with being a single mother of two children without meaningful support from the

children's father. Those events qualify as conditions that were largely beyond her control.

Applicant paid or settled a \$188 debt and a \$402 debt before the SOR was issued. When she responded to the SOR and FORM, she indicated that she was paying her debts through a debt-settlement program. Only one of the four debts in the DSP can be positively ascribed to any of the debts alleged in the SOR. She wrote that she would "continue to work on paying off all of [her] debt as quickly as possible." I reopened the record to provide her the opportunity to submit additional documentation. She did not maintain the DSP. Instead, on January 29, 2019, she retained a law firm to repair her credit and dispute inaccurate items on her credit report. On February 27, 2019, she paid the \$435 debt to the telecommunications company (SOR ¶ 1.d).

Applicant stated that several debts were paid, and she disputed owing other debts. Some debts have been removed from her credit reports. Other than the three debts discussed in the above paragraph, there is no proof that any of the debts have actually been paid. Nonetheless, I am crediting Applicant with mitigation for all the medical debts and the debts alleged in SOR ¶¶ 1.i, 1.cc, and 1.oo.

Even with reopening the record and giving Applicant credit in mitigation as discussed above, I am left with unanswered questions and lingering security concerns. I know little about the current state of her finances, such as whether and how she plans to pay the debts that are her responsibility.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.aa:	For Applicant
Subparagraph 1.bb:	Against Applicant
Subparagraphs 1.cc-1.ff:	For Applicant
Subparagraphs 1.gg-1.hh:	Against Applicant
Subparagraphs 1.ii-1.oo:	For Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge