



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-00125
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

08/21/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant obtained approximately \$72,000 in student loans for her college education. Two student loans were charged off in 2011. Those student loans have been dropped from her credit report, but she provided no evidence of any payments toward their delinquent balances totaling more than \$28,000. Clearance is denied.

Statement of the Case

On February 6, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant,¹ detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action 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*

¹ The SOR was issued to Applicant under her maiden name, as shown in the caption, even though Applicant completed her security clearance application and signed her Answer to the SOR using her married name. There is no indication that she has legally changed her name back to her maiden name.

Program (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On March 19, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record without a hearing by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 18, 2019, the Government submitted a File of Relevant Material (FORM), consisting of six exhibits (Items 1-6). DOHA forwarded a copy of the FORM to Applicant on April 22, 2019, and instructed her to respond within 30 days of receipt. Applicant received the FORM on May 10, 2019. She did not submit any additional information in response to the FORM. On July 9, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on July 15, 2019.

Evidentiary Ruling

Department Counsel submitted, as Item 3, summary reports of subject interviews of Applicant conducted on January 10, 2018, and March 8, 2018. The summary reports were part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary reports did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview where the applicant was placed on notice of her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of her opportunity to submit objections or material that she wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

Also, please note that the attached summaries of your Personal Subject Interview (PSI) — labeled as Enclosure 3 — is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether the PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections

to the admissibility of the summary and may consider it as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded her if she was represented by legal counsel. She was advised in ¶ E3.1.4 of the Directive that she may request a hearing. In ¶ E3.1.15, she was advised that she is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by her or proven by Department Counsel and that she has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of her opportunity to object to the admissibility of the interview summary report, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. She did not respond to the FORM. In the absence of any objections or indication that the summary reports of her interviews contain inaccurate information, I accepted Item 3 in evidence, subject to issues of relevance and materiality in light of the entire record.

Findings of Fact

The SOR alleges under Guideline F that, as of the February 6, 2019 SOR, Applicant owed a \$445 wireless phone debt in collection (SOR ¶ 1.a), and charged-off student loans of \$9,102 (SOR ¶ 1.b) and \$19,552 (SOR ¶ 1.c). When Applicant responded to the SOR allegations, she explained that she had been unaware of the wireless phone debt before the SOR, but she has since paid it. She acknowledged the defaulted student loans, which she obtained as a minor, and indicated that they have been taken on by her co-signer. (Item 1.) After considering the FORM, which includes Applicant's Answer to the SOR, I make the following findings of fact.

Applicant is a 35-year-old defense-contractor employee seeking a DOD security clearance. She has been working for her current employer as a contract administrator since June 2014. Applicant was divorced in September 2015, after ten years of marriage. She has two sons, ages 12 and 16. From July 2008 to March 2015, she resided with her parents and then with her older sister, so she and her ex-husband may have been separated well before their divorce, although it is unclear. (Item 2.)

Applicant pursued her undergraduate studies on and off from 2001 to May 2016, when she earned her bachelor's degree. She obtained approximately \$72,000 in student loans. Two of the loans, obtained for \$4,500 in January 2002 (SOR ¶ 1.b) and \$10,000 in September 2002 (SOR ¶ 1.b), were co-signed. Seventeen other student loans were taken on by Applicant individually. (Items 3-6.)

Applicant was a stay-at-home mother throughout 2007. In August 2008, she began working as a part-time teacher's assistant. In October 2011, she started caring for her grandmother and son in the evenings and weekends, being paid for her services under a state program. She continued to work part-time during the day at the school district until

October 2013, when she left that job to seek other employment. In June 2014, Applicant began full-time employment with a defense contractor while continuing to be paid for her work as a caregiver. (Items 2-3.)

On June 29, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She responded affirmatively to the following financial record inquiry: "In the past seven (7) years, you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)." She disclosed an outstanding \$445 cellphone debt (SOR ¶ 1.a) incurred because she lacked a steady income at the time to consistently pay for her service. She gave an estimated date of September 2011 for the delinquency and indicated that the debt may have been charged off. She admitted that she had taken no action to resolve it. She listed no other past-due debts. (Item 2.)

As of July 12, 2017, Applicant had three outstanding collection debts on her credit record. In addition to the \$445 cell phone debt (SOR ¶ 1.a), which had been in collection since December 2014, the two joint student loans from 2002 had been charged off in 2011 and were in collection for \$9,102 (SOR ¶ 1.b) and \$19,552 (SOR ¶ 1.c). Applicant's other student loans, with an aggregate balance then of \$80,980, were deferred. She was making timely payments on a car loan obtained for \$23,891 in August 2014 (balance \$13,532), and on credit cards with balances of \$2,252, \$540, \$307, and \$1,248. (Item 4.)

On January 10, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). She admitted that the \$445 wireless phone delinquency had not been resolved. As for her two charged-off student loans, Applicant admitted that she had not contacted the loan servicer about repayment because she assumed that the debts would be removed from her credit record after the passage of time. She lacked the steady income to consistently make payments on her student loans. Her Federal student loans had been reported as past due in the summer of 2015. She disputed the delinquency, and indicated that the loans were in deferment. She indicated that she would arrange to begin repaying her student loans in 2018. She had not started to repay any of her student loans or the wireless phone debt, citing limited income and her being a single parent. She had not received any financial counseling, but she indicated that she was living within her means. (Item 3.)

As of October 2018, the student loan delinquencies in SOR ¶¶ 1.b and 1.c were no longer on her credit report. Her Federal student loans had reportedly been delinquent in 2015, but they were not currently past due. No payment amounts were shown on her credit report, so it is likely that the loans were deferred. She was making timely payments of \$385 on a new car loan obtained for \$12,366 (balance \$7,666) in September 2017, after satisfying an older car loan from 2014. Credit card balances totaling \$6,167 and an unsecured loan obtained in June 2018 for \$8,022 (balance \$7,540) were being repaid on time. (Item 5.)

As of March 12, 2019, the collection entity holding the wireless phone debt (SOR ¶ 1.a) was reporting the debt as settled, but not the amount paid. Applicant asserts that she paid the debt in full after she received the SOR. Applicant stated that the charged-off student loans (SOR ¶¶ 1.c and 1.d) “have been taken on by [her] co-signer.” (Item 1.) Applicant presented no evidence of any payments or repayment arrangements by her or her co-signer on the student loans.

As of April 17, 2019, Applicant’s other student loans were rated as current with a total balance of \$88,366. Four loans with a \$24,701 aggregate balance were rated as current with a March 2019 date of last payment, although no actual payment was noted. She was scheduled to make \$703 monthly payments toward her \$63,665 in Federal student-loan balances. It is unclear whether she was making payments on her Federal loans or whether they were deferred. The loan status for each loan was “pays accounts as agreed,” but no actual payments were reported on her credit report. Applicant was making timely payments on seven credit-card accounts on which she owed \$15,263. In March 2019, she paid \$1,125 toward a credit card that had a \$91 monthly scheduled payment. She was paying her September 2017 car loan and her June 2018 unsecured loan on time. (Item 6.)

No information is in the record evidence about Applicant’s current income or her monthly expenses, so a reasonable assessment of her financial situation is precluded.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall 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. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 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 concerns about financial considerations are articulated 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

Available credit reports and Applicant's admissions establish the delinquencies in the SOR. Applicant defaulted on two student loans on which she had a co-signer. As of June 2017, the loans had collection balances of \$19,552 and \$9,102. A \$445 wireless phone debt, in collection as of August 2016, was also unpaid as of February 2019. Disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Applicant has the burden of establishing mitigation. One or more of the following conditions under AG ¶ 20 may apply in whole or in part:

(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 person has received or is receiving 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; and

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

AG ¶ 20(a) is not established. The cell phone and student loan collection debts became delinquent several years ago. However, the debts were not resolved at the time the February 2019 SOR was issued, even though Applicant was aware of the DOD's concerns about her delinquent obligations discussed in her January 2018 personal subject interview. The debts are considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Applicant attributes her financial problems to lack of income and being a single parent. AG ¶ 20(b) has some applicability. Although her divorce was not final until September 2015, she and her spouse may have separated well before then. She was living with her parents and was working as a part-time teacher's assistant when her student loans were charged off in 2011. In October 2011, she began being paid by the state to care for family members. She had two sons to support on her limited income.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside of her control, I have to consider whether Applicant acted in a reasonable manner when dealing with her financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with her creditors. The evidence is mixed in that regard. Applicant disputes that her Federal student loans had been delinquent during the summer of 2015 because the loans should have been in deferment. Even assuming a brief delinquency because of paperwork or processing delays, Applicant acted responsibly toward most of her student loans by obtaining deferments. However, Applicant did not display the same sound judgment when she ignored her long past-due student loans in SOR ¶¶ 1.b and 1.c. She admitted during her January 2018 subject interview that she had not contacted the loan servicer because the accounts would be removed from her credit report after the passage of time.

AG ¶¶ 20(c) and 20(d) are only minimally established. Applicant is credited with settling the cell phone collection debt in March 2019. In response to the SOR, she indicated that her co-signer had taken responsibility for the charged-off student loans. Those student loans no longer appear on her credit report, but their removal does not eliminate them from security concern. The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.² Debts may be dropped from a credit report when creditors believe the debt is not going to be paid or when the debt has been charged off or for some other reason. The Appeal Board has addressed the issue of debts that may no longer be legally collectible, as follows:

The security significance of long delinquent debts is not diminished merely because the debts have become legally unenforceable owing to the passage of time. Security clearance decisions are not controlled or limited by any statute of limitation, and reliance on the non-collectability of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather a security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness to make a decision about the applicant's security eligibility. Accordingly, even if a delinquent debt is legally unenforceable . . . , the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.

² Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reportingact.pdf>.

ISCR Case No. 17-01473 at 5 (App. Bd. Aug. 10, 2018) (quoting ISCR Case No. 10-03656 at 3 (App. Bd. Jan. 19, 2011)). Without any evidence of current efforts at repayment, it cannot reasonably be inferred that her delinquent student loans are being resolved.

The Appeal Board has held that an applicant is not required to establish that she has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). The Appeal Board recently reiterated in ADP Case No. 17-0063 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.” Applicant has demonstrated that she can handle some financial accounts responsibly, as shown by her timely payments on several credit-card accounts, her car loan, and her unsecured loan. However, she is legally liable for student loans that have accrued to \$117,000 (\$88,366 rated as current) that will have to be repaid at some point. Too many unanswered questions exist about her present financial situation. For the reasons noted, the financial considerations security concerns are not sufficiently mitigated.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

Some of the adjudicative process factors were addressed under Guideline F, but some warrant additional comment. Applicant is credited with pursuing her college degree to obtain a better job. It took her some 15 years to obtain her bachelor’s degree, likely because of her other commitments as a mother, part-time teaching assistant, caregiver for family members, and more recently a full-time employee for a defense contractor. Her limited income as a single parent likely provided the basis for continued deferments of her Federal student loans. However, Applicant has been on notice since January 2018 that the DOD was concerned about her student-loan delinquencies. She requested a decision on the written record, so it was incumbent on her to provide the evidence that might extenuate or mitigate her years of disregard of the charged-off student loans. Applicant was advised in the FORM that she needed to provide more in mitigation than merely an uncorroborated assertion that her co-signer would now handle the loans. She chose not to respond to the FORM. For the reasons noted above, I am unable to grant her security clearance eligibility at this time.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against 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.

Elizabeth M. Matchinski
Administrative Judge