



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



In the matter of:)
)
) ISCR Case No. 20-03503
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

June 29, 2021

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On November 19, 2018, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On March 1, 2021, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated March 30, 2021, was provided to her by letter dated April 1, 2021. Department Counsel attached as evidence to the FORM Items 1 through 7. Applicant was afforded a period of 30 days to file objections and submit material in

refutation, extenuation, or mitigation. She timely submitted additional evidence that I marked as Item 8. I received Items 1 through 8 into evidence. On May 27, 2021, the case was assigned to me.

Findings of Fact

Background Information¹

Applicant is a 35-year-old computer and technical support specialist employed by a defense contractor since September 2017. During her January 15, 2019 Office of Personnel Management Personal Subject Interview (OPM PSI), she volunteered that she had undergone a background investigation in 2013 for a top-secret clearance with sensitive compartmented level information access. It is unclear from the record what level of access Applicant is currently seeking.

Applicant graduated from high school in June 2004. She was married from July 2009 to December 2015. That marriage ended by divorce. Applicant remarried in April 2018. She has a ten-year-old son from her first marriage, and twin eight-year-old stepdaughters from her second marriage.

Financial Considerations

Applicant's seven delinquent SOR debts totaling \$26,652 are established by her January 2, 2019 credit report; her June 23, 2020 credit report; her March 26, 2021 credit report; her January 15, 2019 Office of Personnel Management Personal Subject Interview (OPM PSI); and her March 1, 2021 SOR Answer. (SOR ¶¶ 1.a through 1.g; Items 2, 4-7)

Applicant attributed her financial problems to her former husband failing to support the family after their separation in 2014, and leaving her with the marital debt and responsibilities to care for their child. (Item 4) During her January 15, 2019 OPM PSI, she claimed that she started making payments on some accounts. However, it was not until after her February 17, 2021 SOR was issued that she made payments on any of those accounts. (Items 4, 8) The following is a summary of Applicant's seven SOR debts and their current status.

SOR ¶ 1.a – Charged-off credit card in the amount of \$13,462. Applicant stated in her SOR Answer that she contacted the creditor and worked out a payment plan. In her FORM Response, Applicant stated the debt was charged off in 2015. She did not provide any documentation of a payment plan or evidence that the debt was resolved. **DEBT NOT RESOLVED.** (Items 2, 8)

¹ The limited background information regarding Applicant was derived from the FORM and was the most current information available.

SOR ¶ 1.b – Charged-off automobile loan in the amount of \$8,948. Applicant purchased a vehicle in her name for her former husband in 2014. She could not afford the payments and the vehicle was voluntarily repossessed and auctioned. In Applicant's SOR Answer, she stated that the debt was charged off and she could not afford the payments. In her FORM Response, Applicant reiterated what she stated in her SOR Answer. She did not provide any documentation of a payment plan or evidence that debt was resolved. **DEBT NOT RESOLVED.** (Items 2, 8)

SOR ¶ 1.c – Charged-off credit card in the amount of \$3,197. In Applicant's SOR Answer, she stated that she settled this debt, but did not provide any documentation. In her FORM Response, Applicant provided documentation that she settled this debt for the lesser amount of \$1,346 on March 2, 2021. **DEBT RESOLVED.** (Items 2, 8)

SOR ¶ 1.d – Collection account for a medical debt in the amount of \$530. In Applicant's SOR Answer, she stated that she was not aware of this debt, but would contact the creditor and resolve the debt. In her FORM Response, Applicant provided documentation that she had paid this debt on April 14, 2021, and her account had a zero balance. **DEBT RESOLVED.** (Items 2, 8)

SOR ¶ 1.e – Collection account for an electric bill in the amount of \$308. In Applicant's SOR Answer, she stated that she paid this bill on March 1, 2021, but did not provide any documentation. In her FORM Response, Applicant provided documentation that she had paid this debt in full on March 1, 2021. **DEBT RESOLVED.** (Items 2, 8)

SOR ¶ 1.f - Collection account for a medical debt in the amount of \$118. In Applicant's SOR Answer, she stated that she was not aware of this debt, had paid this debt in full, but did not provide any documentation. In her FORM Response, Applicant provided documentation that she had paid this debt in full on April 22, 2021. **DEBT RESOLVED.** (Items 2, 8)

SOR ¶ 1.g – Collection account for a phone bill in the amount of \$89. In Applicant's SOR Answer, she stated that she had paid this bill on March 1, 2021, but did not provide any documentation. In her FORM Response, Applicant provided documentation that she had paid this debt in full on March 1, 2021. **DEBT RESOLVED.** (Items 2, 8)

As the above summary reflects, Applicant resolved five of her smaller seven SOR debts, but left the two largest SOR debts totaling \$22,410, outstanding and unresolved. She did not submit any documentation of any efforts to resolve these two debts, and attributed them to her 2014 separation and 2015 divorce. Applicant's credit reports indicate that she stopped paying on several accounts in 2014 and 2015. (Items 5, 6, 7) In approximately 2018, Applicant settled an unalleged credit card debt in collection. (Items 5, 7) She remarried in 2018, and purchased a home in 2020. (Items 3, 7)

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 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 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 clearance favorable 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” and “(c) a history of not meeting financial obligations.” The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists seven potential mitigating conditions:

(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;

(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;

(f) the affluence resulted from a legal source of income; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶ 20(d) is partially applicable as it pertains to the debts listed in SOR ¶¶ 1.c to 1.g. Applicant resolved those five debts albeit after the CAF issued her SOR on February 17, 2021, almost six years after they were due. The two largest debts totaling \$22,410 remain unpaid and not resolved. The FORM contains no documented evidence that Applicant made a good-faith effort to resolve these two debts apart from her uncorroborated assertions. Good-faith credit cannot be applied to applicants who ignore their debts to the point where creditors charge them off. Applicant attributes her SOR debts to her separation and divorce; however, her divorce was final in 2015, approximately six years ago. She has since remarried in 2018 and bought a house in 2020. The debts in question were legally incurred, and Applicant is the responsible party.

In summary, apart from partial application of AG ¶ 20(d), no other mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of her adult life, and she is presumed to be a mature,

responsible citizen. Nonetheless, without other information suggesting her long-standing financial problems are being addressed, doubts remain about her suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her outstanding delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.b: | Against Applicant |
| Subparagraphs 1.c – 1.g: | For Applicant |

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge