



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



In the matter of:)
)
) ISCR Case No. 20-00926
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2021

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On June 30, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on July 8, 2020, and requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 22, 2021, and the hearing was convened as scheduled on July 8, 2021,

using the Defense Collaboration Services (DCS) video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified, but she did not offer any documents at the hearing. The record was kept open until August 6, 2021, to allow Applicant to submit additional evidence. She submitted Applicant exhibit (AE) A, which is admitted without objection. DOHA received the hearing transcript (Tr.) on July 19, 2021.

Findings of Fact

In her SOR answer, Applicant admitted all of the allegations. Her admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 46-year-old employee of a federal contractor performing the duties of an administrative assistant. She began working at her present job in June 2019. She has taken some college courses for which she incurred the student loans that are discussed below. She is twice married, most recently in May 2019. She married for the first time in 1998 and divorced in 2011. She has five children from her first marriage, ages 28, 23, 22, 17, and 17 (18 in October). Applicant currently only provides financial support for one child. She receives \$250 monthly in child support from her ex-husband. (Tr. 6, 18-20, 22; GE 1)

The SOR alleged 25 delinquent accounts (student loans, medical, and consumer debts) totaling approximately \$60,624. The debts are established by credit reports from September 2019, November 2020, and June 2021; Applicant's personal subject interview (PSI) with a defense investigator in October 2019; and her SOR admissions. (SOR ¶¶ 1.a – 1.y) (AE 2-5; Answer to SOR)

Applicant explained that her financial difficulties began during her first marriage when her ex-husband controlled all financial decisions. When he left her, she discovered that all the bills were in arrears by two months. They divorced in 2010 and she became a single mother with five children to support. Her ex-husband failed to pay child support for approximately seven years. He now pays \$250 monthly for the one minor child living with Applicant, as noted above. He has been assessed arrears for past-due child support, but Applicant has chosen not to enforce that order until her minor child is emancipated. Applicant claimed that their divorce decree required her ex-husband to pay half of all the children's medical expenses, which he failed to do. My review of the divorce decree did not find such a provision. A 2018 modification order requires Applicant to maintain health insurance for two children and pay the associated premiums. The ex-husband is required to pay 80 percent of any uninsured health care costs for the children. The original 2010 divorce decree does not address this issue. Applicant explained that she could not address her debts after the divorce because she needed to concentrate her efforts on supporting her children. Other than a month-and-one-half period of unemployment in 2016, she has been steadily employed. (Tr. 6, 18-20, 23-25 30-31; AE A)

The status of the SOR debts is as follows:

SOR ¶¶ 1.a-1.f-\$3,335; \$9,183; \$2,593; \$2,593; \$2,389; \$5,251. According to Applicant, she incurred her student loans in approximately 2000 and 2004. Her September 2019 credit report shows that these student loans were opened in either 2009 or 2010. This same credit report indicates that all the loans were in a 120-days past due status. In her October 2019 PSI, she acknowledged the debts and that she had been “deferring” them because she could not make the required payments. In her hearing testimony, she stated she had not made a payment in over five years and she reiterated that her loans were on a continuing deferred status (she specifically stated she was not talking about the CARES Act deferment resulting from the COVID-19 legislation). She further stated she could provide documentation of her deferments and documents showing the current status of her student loans. She failed to provide any supporting documentation before the record closed on August 6, 2021. She claims that she will begin making \$250 monthly payments beginning in October 2021. These debts are unresolved. (Tr. 26-28, 37; GE 2-3)

SOR ¶ 1.g-\$446. This is a cable TV debt. This debt was assigned for collection in August 2017. Applicant claims she disputed this debt because it was for cable equipment that she had returned. She claims that she contacted the creditor who was looking into the matter. She failed to present supporting documentation of any of these assertions. This debt is unresolved. (Tr. 29; GE 3)

SOR ¶ 1.h-\$1,027. This is a telecommunications debt. This debt was assigned for collection in December 2018. Applicant claims she will begin paying this debt in October 2021. She has not contacted the creditor. This debt is unresolved. (Tr. 30; GE 3)

SOR ¶ 1.i-\$1,498. This is a telecommunications debt. This debt was assigned for collection in February 2016. Applicant claims her ex-husband established this account and put it in her name. She plans to contest this debt with the help of an attorney. She has not contacted the creditor. This debt is unresolved. (Tr. 31; GE 3)

SOR ¶¶ 1.j-1.t-\$753; \$130; \$851; \$601; \$444; \$2,325; \$1,843; \$660; \$1,075; \$2,463; \$400. According to Applicant, these are all medical debts incurred by her children. She claims, pursuant to their divorce decree, her ex-husband is required to pay half of all these medical debts. I found no definitive language in her divorce decree supporting her assertion. Regardless, Applicant failed to produce documentation showing that she paid her half of the medical bills. These debts are unresolved. (28-29, 36; GE 3)

SOR ¶ 1.u-\$504. This is a utility debt. This debt was assigned for collection in August 2014. Applicant claims she paid this debt years ago. She claims she could produce supporting documentation. She failed to do so. This debt is unresolved. (Tr. 31-32; GE 3)

SOR ¶ 1.v-\$37. This is a utility debt. This debt was assigned for collection in June 2017. Applicant stated she would pay this debt “today” (meaning the day of the hearing: July 8, 2021). She failed to produce any supporting documentation of payment before the record closed. This debt is unresolved. (Tr. 32; GE 3)

SOR ¶ 1.w-\$93. This is a utility debt. This debt was assigned for collection in July 2018. Applicant stated she would pay this debt on July 15, 2021. She failed to produce any supporting documentation of any payment before the record closed. This debt is unresolved. (Tr. 32; GE 3)

SOR ¶ 1.x-\$6,445. This is an apartment-rental-damage-deposit debt. This debt was assigned for collection in December 2014. Applicant disputes this debt. She claims that the apartment was damaged by vandals after she vacated it and turned over the keys. She failed to produce any documentation supporting her dispute. This debt is unresolved. (Tr. 33; GE 3)

SOR ¶ 1.y-\$20,685. This is an automobile repossession debt. This debt was assigned for collection in March 2016. Applicant acknowledged this debt and noted that she had not done anything to address this debt. This debt is unresolved. (Tr. 33; GE 3)

Applicant has not received any financial counseling or provided any budgetary information. (Tr. 35)

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.

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.

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 that an 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

AG ¶ 18 expresses 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant incurred multiple delinquent debts including student loans, of which all remain unpaid or unresolved. I find both disqualifying conditions are raised.

Although President Biden extended a pause on the collection of student loans due to COVID-19, thus creating a deferment period on student-loan payments (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing->

[student-loan-payments/](#)), that action does not excuse previously delinquent student loans. (See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021)) Therefore, Applicant is still responsible for them.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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's debts are recent because they are ongoing and unaddressed. She failed to produce evidence showing that recurrence of her financial problems is unlikely. AG ¶ 20(a) is not applicable.

Applicant experienced financial difficulties from her divorce in 2010 and having to raise five children on her own and a short period of unemployment. These were circumstances beyond her control. However, she did not act responsibly by taking little, if any action, to resolve these debts. AG ¶ 20(b) is not fully applicable.

Applicant did not present evidence of financial counseling. Her track record to date does not support a good financial picture. Additionally, she failed to put forth a good-faith effort to resolve her debts. Applicant's financial problems are not under control. She also failed to present documentation supporting her disputed debts. AG ¶¶ 20(c), AG 20(d), and AG 20(e) do not 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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's marital difficulties and the circumstances surrounding her indebtedness. However, I also considered that she has made insufficient efforts to resolve her debts. She has not established a meaningful track record of debt management, which causes me to question her ability to resolve her debts.

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 has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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.y:	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.

Robert E. Coacher
Administrative Judge