



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



In the matter of:)
)
) ISCR Case No. 20-03169
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2021

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. She did not present sufficient documentation to support her burden of proof. Eligibility for access to classified information is denied.

Statement of the Case

On April 7, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017. Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on June 10, 2021. Applicant received the FORM on June 30, 2021. Applicant did not object to the Government’s evidence, and did not provide a response to the

FORM. The Government's evidence, included in the FORM and identified as Items 1 through 4, is admitted without objection. The case was assigned to me on October 6, 2021. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations 1.a through 1.c with explanations. (Item 1) She denied SOR allegations 1.d and 1.e. The total amount listed in the five SOR allegations total about \$19,000 in delinquent auto and consumer debt. The allegations are supported by a credit report and security clearance application. (Item 4)

Applicant is 34 years old, and married with two children. She attended a community college from May 2016 to May 2018, receiving an associate degree. (Item 2) She completed a security clearance application on May 12, 2020. Applicant has worked for her sponsoring employer since January 2020. (Item 2) She also graduated from a state Department of Corrections Academy in May 2016, with honors. (Item 2) Applicant volunteered at the state guard training program service branch.

Financial

Applicant attributes her delinquent debts to a number of things: marital separation; unemployment while attending college from 2016 to 2018; health issues in 2018 and part of 2019; a car defect; and a hurricane.

As to SOR 1.a, a vehicle repossession in the amount of \$3,463, Applicant admitted that she initiated payment arrangements and has paid \$100. There is no other indication that she has made another payment. She stated that because she was going through a marital separation she could not afford to make payments. The date of the payment was April 15, 2021. The balance due in September 2013 was \$2,250. (Attachment to Answer)

As to SOR 1.b, a charged-off account in the amount of \$12,196, Applicant stated that this was part of litigation against a car manufacturer. She returned the vehicle and had made payment arrangements. She submitted with her answer proof of a \$100 payment that she made on April 14, 2021.

As to SOR 1.c, a cell phone collection account in the amount of \$3,211, Applicant stated that she has made payment arrangements. She stated that she could not keep up with her phone bill due to the hurricane and loss of income. She has not produced any documentation as to payments.

As to SOR 1.d, a cable collection account in the amount of \$473, Applicant stated that she paid the account and has a zero balance. She submitted documentation with her answer.

As to SOR 1. e, a collection account in the amount of \$126, Applicant denies that she owes this because she paid the account in full and has a zero balance. She provided no documentation to confirm her assertion.

There is no information in the record concerning Applicant's salary, use of a financial counselor, budget, or income. Applicant provided no documentation to support a specific plan for resolving her financial issues.

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 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(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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶¶ 19(a) (“inability to satisfy debts”), and 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted, and her credit reports confirm, that she is responsible for the delinquent debts. She did have circumstances beyond her control, but she did not act responsibly. She paid one of her smaller debts recently although she has had the delinquent debts for several years. She promised in her 2020 investigative interview to start payment plans, however she did not provide sufficient information to support a track record of financial stability. She paid one of her smaller debts, and submitted two \$100 payments on her larger debts. She has not presented any financial arrangement agreements. She has received no financial counseling. She has not provided any documentation that supports any of the mitigating conditions. She receives partial mitigation for a condition beyond her control, but did not act to resolve any delinquent accounts until after her SOR.

Based on the lack of evidence produced by Applicant, it is difficult to conclude she made a sufficient good-faith effort to resolve her debts, or that her financial situation is under control. Despite gainful employment, there is no evidence that Applicant has a meaningful track record of financial responsibility in this case. She has not met her burden and none of the mitigating conditions apply. Any doubts must be resolved in favor of the Government.

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 as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of this decision, any remaining doubts must be resolved by denying 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge