



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



In the matter of:)
)
) ISCR Case No. 19-02026
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

11/04/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On September 29, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant's answered the SOR on February 12, 2021, 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), and Applicant received it on July 12, 2021. She was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 7. (Item 1 is the Statement of Reasons.) Applicant submitted a timely response and documents, which are marked as Applicant Exhibits (AE) A through O. Applicant objected to the security concern included under Guideline F, financial considerations that may be applicable in her case. The SOR is not evidence, and her objection is overruled. There were no other objections, and Items 2 through 7 and AE A through O are admitted in evidence. The case was assigned to me on October 20, 2021.

Findings of Fact

Applicant denied the SOR allegations in ¶¶ 1.a through 1.h. She admitted the SOR allegations in ¶¶ 1.i, through 1.k. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 63 years old. She married in 1974 and divorced in 1988. She has three adult children from the marriage. She remarried in 2000, and she has four adult stepchildren. She and her husband adopted two of his grandchildren. She completed a doctorate degree in 2021. She also has two master's degrees (1998, 2015), a bachelor's degree (1995), and an associate's degree (1993). She has been employed with the same federal contractor since 2002, except for a short period when she was employed by one of its subsidiaries. She has held her current security clearance since approximately 2012. (Item 3)

Applicant has a history of financial difficulties that were caused by many events that were beyond her control. She filed Chapter 13 bankruptcy in 1994 that was converted to Chapter 7 in January 1998 and discharged in April 1998. This occurred after Applicant's divorce from her first husband. She was left with many marital bills that were to be paid by her ex-husband and were not. Applicant attempted to pay them through the Chapter 13 bankruptcy, but was unable to do so because of her limited income and supporting her three children. She earned about \$15,000 per year at the time. (SOR ¶ 1.j; Items 2, 7)

Applicant filed Chapter 7 bankruptcy in September 2000, and her debts were discharged in December 2000. She attributed this bankruptcy to losing her job in 1999 and moving back to her home state. (SOR ¶ 1.k; Items 2, 7)

In 2005, Applicant's husband was not working, and her son, his wife, and their three children moved in with them when her son lost his job. Applicant did not earn enough money to support the household. Applicant and her husband filed Chapter 13 bankruptcy in October 2005. They completed all of the court approved payments to their creditors through the bankruptcy trustee, and their debts were discharged in 2010. (SOR ¶ 1.l; Items 2, 7, 8)

In December 2018, Applicant was interviewed by a government investigator as part of her background investigation. She attributed her past financial problems to supporting her son and his family when he lost his job and moved in with her; her

husband's loss of his job; funeral expenses as a result of the passing of her father in 2016; and medical issues in 2010, 2017 and twice in 2019 from her kidney failure. In addition, her husband suffered a massive heart attack in October 2020. He survived, but his heart only functions at half capacity. Her family incurs about \$13,000 annually in out-of-pocket medical expenses.

The SOR alleged that Applicant's student loans were past due. Applicant explained that she was unaware that they were not placed in a deferred status when she resumed school. She provided documents to show that her student loans are deferred. The deferment will expire in April 2022, and she will have to begin paying these loans. The allegation in SOR ¶ 1.a is resolved in Applicant's favor. (Item 2; AE A, B)

Applicant disputed the charged-off debt in SOR ¶ 1.b (\$21,950) because of the alleged fraudulent practices of the car dealership. A lawsuit was filed by the creditor and responded to by Applicant. This debt was settled and paid by Applicant in July 2021. This debt is resolved. (Item 2, AE C).

The debt in SOR ¶ 1.c was for a repossessed vehicle that Applicant purchased for her stepdaughter who was to make the payments, but did not. In Applicant's response to the FORM, she stated she has repeatedly contacted the creditor and left messages that she wants to settle this debt, but has not received a collection letter or return call. Her August 2018 credit report lists the debt as a repossession and the "merchandise taken back by grantor/possible balance due." There is no balance due noted on this entry. Her May 2019 and June 2021 credit reports also note the debt as a repossession, but the past-due amount and balance owed is zero. Applicant has attempted to responsibly address this debt. It does not appear there is a deficiency balance. It is resolved. (Items 2, 4, 5, 6; AE A)

Applicant provided documents to show that she has a payment plan with the creditor in SOR ¶ 1.d and has been making consistent monthly payments since 2016. The current balance owed as of May 2021 is \$551. Based on the payments scheduled, this debt should be completely paid by November 2021. It is resolved. (Item 2, AE D)

Applicant denied she owed the debt in SOR ¶ 1.g (\$122), stating she has repeatedly disputed this debt and never had an account with the creditor. She stated in her response to the FORM that she requested the credit bureaus remove this account from her report. It is listed as a collection account on her August 2018 credit report, but it is not listed on her May 2019 or June 2021 credit reports. The account is resolved. (Items 2, 4, 5, 6, 8; AE A)

The debts alleged in SOR ¶¶ 1.e (\$100); 1.f (\$35); 1.h (\$1,451); and 1.i (\$250) are medical debts. Applicant denied these debts in her SOR answer. She explained that she has paid thousands of dollars in medical bills over the years and sometimes some get missed. In her FORM response, she stated that her credit reports only list these debts as medical, but do not show the specific medical creditor. Applicant stated she has written the credit bureaus requesting the accounts be removed. She provided receipts for

medical debts she paid to different medical creditors. It is unknown if any are the ones alleged in the SOR. She stated that she was told by a collection agency that some medical debts are put on hold because some providers send bills to collection agencies before they receive their final payments from the insurance companies. Applicant has taken reasonable action to resolve these debts. (Items 2, 4, 5, 6, 8; AE A, AE E through AE M)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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 concern relating to the guideline 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and

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

Applicant had debts discharged in Chapter 7 bankruptcy in April 1998 and December 2000. She filed Chapter 13 bankruptcy in 2005 and completed it in 2010. Applicant began experiencing financial difficulties again in approximately 2016 and accumulated delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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's financial difficulties in the past were caused by many things beyond her control. She filed bankruptcy three times. In 2005 she filed Chapter 13 bankruptcy and adhered to a payment plan until it was discharged in 2010. This is an indicator that Applicant is not ignoring her debts and responsibly addressed them. The facts suggest that despite many setbacks, she is diligently taking care of her family and addressing her finances. Her financial history is far from perfect. However, the standard is not perfection, but whether her financial issues raise a security concern. Although she has had difficulties due to trying to take care of her family, medical setbacks, and unemployment, she has managed to address her finances. I find she has acted responsibly under the circumstances and her conduct does not cast doubt on her currently reliability, trustworthiness, and good judgment. She has made good-faith payments to her creditors and is adhering to plans to resolve her debts. She disputed the legitimacy of some debts and they were removed from her credit reports. AG ¶¶ 20(a), 20(b), 20(d) and 20(e) apply.

Applicant did not provide evidence that she has received financial counseling. With upcoming payments in the next six months due on her student loans and based on her past history of financial difficulties, it would be prudent for her to participate in financial counseling so similar issues do not recur. AG ¶ 20(c) does 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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant had many events beyond her control that impacted her finances. Her past financial history is not perfect, but I believe that she took the required steps available to her to correct her past problems. The security concern is whether she has acted irresponsibly regarding her financial obligations. The evidence supports she has not. She has met her burden of persuasion. The record evidence leaves me with no questions or doubts as to her eligibility and suitability for a security clearance. For all these reasons, I conclude she has mitigated the security concerns raised under Guideline F, financial considerations.

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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge