



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



In the matter of:)	
)	
)	ISCR Case No. 20-03668
)	
Applicant for Security Clearance)	

Appearances

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

11/16/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Personal conduct security concerns were not established, but Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 5, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 25, 2021, and requested a decision based on the written record in lieu of a hearing. On March 31, 2021, Department Counsel requested a hearing before an administrative judge. On the same date, Department Counsel amended the SOR by adding two allegations under Guideline E, personal conduct. Applicant responded to the amended SOR on April 6, 2021.

The case was assigned to me on June 29, 2021. The hearing was convened as scheduled on July 29, 2021. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A

through D, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that I marked AE E through L and admitted without objection.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor, where she has worked since 2002. She held a security clearance from about 2003 until it was revoked because of her finances in 2011. She has associate's (2008), bachelor's (2012), and master's (2017) degrees. She is married with two adult children and two adult stepchildren. (Transcript (Tr.) at 21-23; GE 1-3)

The SOR alleges \$15,035 owed on a charged-off auto loan; eight miscellaneous delinquent debts totaling about \$12,300; and a \$179 medical debt. The delinquent debts are listed on an April 2020 credit report. Applicant admitted that she owed the debts at one time, but she denied that she owed the amounts alleged in the SOR.

Applicant attributed her financial problems to her and her husband's medical issues. Her husband's medical problems limit his work to a part-time basis. She is the primary provider for her family, which includes her daughter and three grandchildren who live with Applicant and her husband. She also assisted in paying the expenses for her brother's funeral in January 2020. (Tr. at 19-20, 25-28, 37, 50, 53; GE 2)

Applicant contracted with a debt-resolution company in August 2019. She enrolled eleven debts, totaling \$21,390, in the company's debt-resolution program (DRP). The six debts alleged in SOR ¶¶ 1.b and 1.d through 1.h were included in the DRP. SOR ¶ 1.c alleges \$2,583 owed to a bank. That debt is not specifically identified in the DRP, but two debts of \$1,983 and \$1,111 to the same bank are in the DRP. The evidence supports that the SOR ¶ 1.c debt, or a refinanced version of the debt, is in the DRP. The \$15,035 charged-off auto loan (SOR ¶ 1.a); a \$685 charged-off debt to a bank (SOR ¶ 1.i); and the \$179 medical debt (SOR ¶ 1.j) were not included in the DRP. There were three debts in the DRP totaling \$11,083 that were not alleged in the SOR.¹ (Tr. at 28; Applicant's response to SOR; GE 2, 4, 5; AE C, D)

Applicant agreed to deposit \$338 per month into an escrow account with the debt-settlement company. The company agreed to negotiate settlements with her creditors and use the accumulated funds in the escrow account, minus their fees, to pay the settlements. In addition to their start-up and monthly fees, the company would earn fees based on the amount of any debt that was settled. (AE C, D)

Applicant stated that her debts were not delinquent when she contracted with the debt-settlement company. She did not understand the DRP. She thought it was a consolidation loan that would pay her creditors, and she would pay the loan. She did not realize that her accounts went into a past-due delinquent status. She continued with the

¹ Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

DRP because it was achieving results. Applicant established that she consistently paid the \$338 monthly payments since the DRP's inception. (Tr. at 19-20, 28-30; AE E-I)

In June 2021, Applicant took out a consolidation loan of \$12,018 through the debt-resolution company. The annual interest rate is 25.24%. Applicant did not receive the funds; the funds were to be disbursed to the creditors in the DRP, minus the company's fees. In June 2021, the company credited drafts totaling about \$5,771 from the loan to her DRP. The company paid \$4,727 to six creditors, and debited \$724 in settlement fees. In July 2021, the company credited drafts totaling about \$5,084 from the loan to her DRP. The company paid \$4,602 to three creditors, and debited \$1,530 in settlement fees. The eleven debts in the DRP, including the seven debts alleged in SOR ¶¶ 1.b through 1.h are either settled and paid or in the process of being settled and paid. (AE E-H, J-L)

Applicant earns about \$32,000 annually. Her husband works part-time, and her daughter works and contributes to the household. In addition to her DRP payments, Applicant is current on her \$1,622 monthly mortgage payments. She has about \$163,000 in deferred student loans. The \$15,035 charged-off auto loan was taken out in about October 2016. Applicant stated that she and her husband bought the vehicle for between \$30,000 and \$40,000, and it was voluntarily repossessed one to three years after the purchase. She and her husband are current on two auto loans. They pay \$674 per month on an auto loan of about \$36,500 that was taken out in March 2018; and they pay \$871 per month on a \$47,500 auto loan that was taken out in March 2019. The July 2021 credit report lists delinquent telecommunications debts of \$2,039 and \$554. Applicant stated that she would add the remaining debts alleged in the SOR and the two telecommunications debts to the DRP. (Tr. at 29, 37-42, 47-54; GE 4, 5; AE E, F)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2020. Under the investigations and clearance record questions, she failed to report that she was previously granted a security clearance and that it was revoked in 2011. She reported one delinquent debt under the financial questions. She also reported that she was utilizing a "credit counseling service or other similar resource to resolve [her] financial difficulties," with the following explanation:

[Debt-settlement company] has provided a non-credit based consolidation option, that consolidates my debts into one lower payment. Paying outstanding balances down and eventually off.

This plan ha[s] consolidated my debts into one affordable monthly payment. [Debt-settlement company] works with my creditor[s] to get my debt paid off in three [and] a half years or sooner.

Applicant denied intentionally providing false information on the SF 86. She stated the answers to the questions about her security clearance were a mistake, and that she had no reason to lie about it, because the DOD was well aware that her

security clearance had been revoked. She thought she was being honest about the financial questions based on her misinterpretation of the DRP. (Tr. at 30-36; Applicant's response to SOR) After considering all of the evidence, I conclude that Applicant did not intentionally falsify the SF 86.

Applicant submitted letters attesting to her excellent job performance and strong moral character. She is praised for her trustworthiness, reliability, professionalism, dedication, and judgment. (AE A, B)

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 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 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

Guideline F: Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including a charged-off auto loan, delinquent consumer debts, and an unpaid medical debt. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

Applicant attributed her financial problems to her and her husband's medical issues and being the primary provider in her family. She contracted with a debt-resolution company in August 2019, almost a year and a half before the SOR was issued. She consistently paid the \$338 monthly payments since the DRP's inception. In June 2021, she took out a consolidation loan of \$12,018 through the debt-resolution company. In effect, she substituted one form of indebtedness (credit card debt) for another form (a consolidation loan) or, looking at it in a different way, she converted old debt into new debt. The eleven debts in the DRP, including the seven debts alleged in SOR ¶¶ 1.b through 1.h are either settled and paid or in the process of being settled and paid.

If Applicant's finances were otherwise in order, this would be a case that could be found in her favor. However, I simply cannot make the math work in her favor. She is the primary provider for her family with an annual salary of about \$32,000. She has the consolidation loan that has to be paid; a \$1,622 monthly mortgage payment; \$1,545 in monthly auto-loan payments; and about \$163,000 in deferred student loans that will have to be paid at some point. Applicant's car purchases are of particular concern. The \$15,035 charged-off auto loan in the SOR was taken out in about October 2016 for a vehicle that cost between \$30,000 and \$40,000. Within a short period before or after that vehicle's repossession, she and her husband bought two more vehicles for about \$36,500 and \$47,500. To Applicant's credit, she is current on her mortgage loan and the two auto loans. The fact that something has to give is evidenced by the two delinquent telecommunications debts.

I am concluding the seven debts alleged in SOR ¶¶ 1.b through 1.h, which were either settled and paid or in the process of being settled and paid through the DRP, in Applicant's favor. I am also concluding the small medical debt in her favor. The \$15,035 charged-off auto loan (SOR ¶ 1.a) and the \$685 charged-off debt to a bank (SOR ¶ 1.i) remain unresolved.

I am unable to conclude that Applicant's financial problems will be resolved within a reasonable period. It is more likely that they will worsen. They continue to cast doubt

on her current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

Guideline E: Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on the March 2020 SF 86. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for Applicant.

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 have incorporated my

comments under Guidelines E and F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude personal conduct security concerns were not established, but Applicant did not mitigate the financial considerations security concerns.

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:	Against Applicant
Subparagraphs 1.b-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge