



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



In the matter of:)
)
) ISCR Case No. 19-03286
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Anny Leon, Esq.

01/12/2021

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On January 31, 2020, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DOD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on February 26, 2020, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 13, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 16, 2020, scheduling the hearing for November 16, 2020. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted. Applicant testified on her own behalf. She submitted Applicant's Exhibits (AE) A through I, which were admitted into the record without objection. At Applicant's request, the record was held open until November 30, 2020. Applicant submitted two documents,

which were marked as (AE) J and K, and admitted into the record without objection. The Government submitted two additional documents, which were marked as (GE) 7 and 8, which also were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 14, 2020.

Findings of Fact

Applicant, age 50, married in 2018 and has one adult son. She obtained her Master's degree in 2003. Applicant completed her security clearance application on August 22, 2018. She has been employed with her current employer since 2016. She has held a security clearance since 2008. (GE 1).

The SOR alleges that Applicant has eleven delinquent debts, three for medical collection accounts in the approximate amount of \$99. The debts include seven delinquent student loan debts in the approximate amount of \$216,847. Applicant denied that all allegations for student loans were not paid or past due. (SOR)The SOR further alleged a collection account for an apartment in the amount of \$489.

Applicant acknowledged that not all of the student loans belonged to her. She explained that she obtained some for her son so that he could complete his college education, and that she was a single parent. (Tr. 18). She could not recall the amount of money for the student loans which belonged to her. (Tr. 18) In her 2019 subject interview, she stated that some of the student loans were duplicates on her credit reports after she had consolidated some of the student loans. (GE 2) In her DOHA interrogatories, she stated that all the student loans were paid, that she had a payment plan, but that she had no documentation to show payments. At the hearing, Applicant had no idea how the student loans were combined. (Tr. 23)

The student loans date from 2000 until 2011. (Tr. 44) Applicant stated she had a repayment plan for a few years with one servicer, but did not realize that it expired after one year. However, she received an email that stated the servicing agent had changed and directed her to the proper source. (GE 4) She claims she continued to make payments but they were not counted. (Tr. 20) None of this information on student loans was included in her security clearance application.

Applicant presented a document showing rehabilitation terms and conditions, for her student loans, dated December 2019. The first payment of \$633 was due in January 2020. (AE) F She believed the payment is for the student loans alleged in SOR 1.a through 1.d. (Tr. 23)

Applicant submitted post-hearing documentation concerning the payments made but there were no account numbers to match the student loans, and the various payments were started in 2019. There was a copy of a note from federal student aid that some or all of the federal student loans were rehabilitated from September 2019 until November 2020. There is no connection to discern which student loans were rehabilitated.

As for the medical accounts in 1.e, 1. 1g, and 1.h, Applicant presented a receipt for a total amount of \$117 paid on February 13, 2020. (AE H)

Applicant denied that she owed the alleged 2018 debt of \$489 in 1.f. She told investigators that she was not aware of this debt. She explained at the hearing that it was a debt from an apartment that her son was renting in college. She co-signed the loan. (Tr.25) She stated that it has been removed from her credit report. She had not tried to resolve this debt.

As to the student loan accounts in 1.i, 1.j, and 1.k., Applicant claimed that they were also in consolidation and she has been paying the \$633 for the loans. (Tr. 28) The post-hearing submission (AE J) did not substantiate her claim.

Applicant presented a letter of recommendation and employee reviews. (AE C) and D. She also presented performance reviews which attest that she is competent and handles her duties in a professional manner. (AE C and D).

Applicant earns approximately \$120,000 a year. (Tr. 34) A pay stub (GE 4) shows that her earnings for a pay period in 2019 were \$ 158,938. Applicant acknowledged that may have included bonuses. Her husband earns approximately \$150-\$160,000 per year. (Tr.37) Applicant has a net remainder of approximately \$1,000. (Tr.41) She has no written budget and has not received financial counseling. (Tr. 57)

Applicant's credit bureau report shows that the reason for her credit score is that she has too many over-due accounts. (AE I) The original amount of her student loan accounts was approximately \$60,000 to \$70,000, but due to defaulted payments or no payments until 2019 or 2020 the amount is now over \$200,000.

Although the SOR does not contain any allegation with regard to federal or state tax liens, when asked routine financial question by the Government, she stated that she had none. (Tr. 58) Applicant's final post-hearing submission (AE K) shows she contacted a tax attorney on November 19, 2020 to resolve the issue of the tax liens (federal and state) for delinquent taxes from about 2009 until 2011. (GE 7 and 8)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire

process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 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).

The Government established its prima facie case, establishing two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of 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's student debts are long-standing and she acknowledges that she was not sure which student loan accounts were her and which were her son's accounts. They originated in 2001. Until 2019 or 2020, Applicant did not apply for rehabilitation. She gave various reasons for her financial situation that were not credible. She produced no documentation to connect which student loans were consolidated. She completed a rehabilitation program for some of the student loans but from the documentation, it is not clear which accounts are included. The student loans were not due to circumstances beyond her control. She paid a medical account and presented documentation that applies to three alleged medical accounts. AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved. AG ¶ 20(b) is not established. She has not acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling nor are there clear indications that her financial situation is under control. She has not shown that she has acted in good faith throughout the past 20 years.

Applicant failed to meet her burden to mitigate the financial concerns set out in the SOR. She was not credible in her testimony and failed to document with sufficient evidence that she has mitigated the financial concerns.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including credibility and openness at the hearing, I conclude that Applicant did not mitigate the security concerns raised by her financial indebtedness. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information. All doubts must be resolved in favor of the Government.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraphs 1.e, 1.g:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge