



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 21-00994
)
 Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

12/09/2021

Decision

MODZELEWSKI, Moira, Administrative Judge:

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

Statement of the Case

On June 9, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 answered the SOR on June 24, 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 August 27, 2021. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In her response of September 27, 2021, Applicant

did not object to Government's exhibits 1 through 6; they are admitted into evidence. She submitted a letter in response to the FORM and attached documents detailing payments to a collection agency and payment plans for student loans: Applicant's exhibits A through C are admitted. The case was assigned to me on November 3, 2021.

Findings of Fact

Applicant is 30 years old and married, with no children. After graduating high school in 2009, she attended three years of college, but did not earn a degree. After leaving college in 2012, Applicant worked in various jobs, including as a caterer, a retail assistant manager, a loan processor, and a hospital receptionist. She experienced two periods of unemployment. In January 2018, she left her job as a hospital receptionist to care for ill family members and remained unemployed until October 2018. In December 2019, she lost her retail job because the store closed, and she remained unemployed at least through the completion of her SF86 in August 2020. Applicant lived with her parents from 2008 through completion of her Questionnaire for National Security Positions (SF86) in August 2020. (GE 3)

Applicant funded her college education through federal student loans, and those loans form the bulk of her financial delinquencies. The SOR alleges eight defaulted student loans that first became delinquent in 2016 and are now held by the Department of Education (DoE); they total \$47,764. In addition to the student loans, the SOR alleges a delinquent consumer account of \$506 and four delinquent medical debts that total \$1,727. The delinquent loans and debts are established through credit reports and Applicant's admissions. (GE 2, 4, 5)

In addition to the DoE student loans alleged in the SOR, Applicant took out three Nelnet federal student loans that are not alleged, as they were in deferment when the SOR was issued. Those loans total \$19,835. Throughout the adjudicative process, Applicant apparently conflated the Nelnet and DoE loans. In her background interview of September 2020, Applicant asserted that she was on a payment plan of \$5 per month for all of her student loans, both Nelnet and DoE, but stopped payments in July 2020 as the loans were being transferred to a new lender. The credit reports do not support Applicant's understanding that the DoE and Nelnet loans were in any way consolidated. In her FORM response of September 2021, Applicant stated her intent to pay all her student loans and submitted documents pertaining both to the DoE loans and the Nelnet loans. (GE 4, 5, 6; AE B, C) I have not considered any derogatory information that was not alleged for disqualifying purposes. I may consider it in making a credibility determination, in the application of mitigating conditions, and in my whole-person analysis.

The documents submitted by Applicant indicate that she was recently accepted into a loan rehabilitation program for her defaulted DoE loans. In August 2021, she signed an agreement committing to monthly payments of \$242. The record does not confirm any payments under this plan. Additionally, Applicant submitted documents indicating that she entered into an income-based repayment plan with Nelnet and had made two payments of \$190 under that plan as of September 2021. (AE B, C)

Applicant also submitted documents confirming that, in December 2020, she began payments to the collection agency holding her medical accounts: three of the medical debts alleged have been paid. (AE A) She submitted no documents regarding the one consumer debt alleged.

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, primarily student loans that first became delinquent in 2016. 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 was unemployed on two occasions after leaving college in 2012. In January 2018, she left her job to care for ill family members and remained unemployed until October 2018. In December 2019, she lost her retail job when the store closed and remained unemployed at least through the completion of her SF86 in August 2020. I find that these events were largely beyond Applicant's control.

The question is whether Applicant acted responsibly under the circumstances. Turning first to the medical account delinquencies, Applicant started to address them in earnest in December 2020, making several payments through August 2021 that totaled \$571 and satisfied three of the four debts alleged. SOR ¶¶ 1.a, 1.c and 1.d are concluded for Applicant.

Applicant's student loans, however, form the bulk of her financial debts, and she has failed to establish a reliable track record in resolving them. Applicant's DoE accounts were delinquent in June 2016 and categorized as seriously delinquent in September 2017, well before Applicant's first period of unemployment. The evidence indicates that Applicant entered into a rehabilitation program for the DoE loans in August 2021, five years after they first became delinquent and shortly after the SOR was issued. At about the same time, Applicant entered into an income-based repayment plan on her Nelnet loans. An applicant who begins to resolve security concerns only after having been placed on notice that her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

Applicant states her intent to pay off all the student loans. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). Consequently, Applicant's nascent efforts to rehabilitate her DoE loans and to begin payments on her other student loan debt do not provide significant mitigation under AG ¶ 20 (d).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. None of the above mitigating conditions fully apply. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 Guideline F in my whole-person analysis. I also considered Applicant's ongoing efforts to resolve her medical debts and non-alleged debts. However, those positive factors are insufficient to overcome Applicant's financial problems. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e-1.m:	Against 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.

Moira Modzelewski
Administrative Judge