



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01880
)
Applicant for Security Clearance)

Appearances

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

03/22/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On October 27, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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 on June 8, 2017.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on December 15, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 6, 2022,

scheduling the hearing for February 1, 2022, by Microsoft Teams. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant testified and did not offer any exhibits. There were no objections to the exhibits, and they were admitted into evidence. The record remained open until February 15, 2022, to permit Applicant to submit documents, which she did, and they were marked as Applicant Exhibits (AE) A through J. There were no objections, they were admitted into evidence, and the record closed. DOHA received the hearing transcript on February 11, 2022.

Findings of Fact

Applicant denied all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. She has never married. She has three children, ages 23, 11 and 4 years old. Her eldest is presently not working. Applicant provides support to all of them. She also provides some support for her grandchild. She testified that she receives child support for the middle child, but the father is not current with his payments and has only started to pay since 2021. The father of her youngest child provides occasional support, but not regularly. (Transcript (Tr.) 20-22, 83, 87)

Applicant's current annual salary since July 2021 is about \$92,000. Before that it was about \$78,000, and earlier it was about \$62,000. She has worked for her present employer, a federal contractor, since August 2017. She has been steadily employed since 2003, except for a period from June 2017 to July 2017, when she had health issues related to her pregnancy, and from January 2010 to December 2010, due to budget cuts. (Tr. 23-26, 32-33, 37-38; GE 1)

Applicant had lived with her mother, but moved out in January 2019. She moved back in in November 2021, along with her two youngest children. She attributes her financial problems to being a single parent, health issues, and medical expenses. Applicant stated that her medical issues began in about 2017. She has medical insurance, but she estimated her out-of-pocket medical expenses are about \$1,000 annually. (Tr. 26-27, 31, 34-37)

Applicant attended college from 1999 until May 2002. She did not earn a degree. She resumed school at a different college from January 2003 until December 2014. She financed her education with student loans. She needs three more classes to earn a degree. (Tr. 29-30; GE 1)

The SOR alleged eight delinquent consumer debts, one medical debt, and three student loans totaling approximately \$60,334. Applicant disclosed the debt in SOR ¶ 1.a (\$617) on her August 2019 security clearance application (SCA) and indicated it was a collection account, caused by a decrease in her income. She indicated it was resolved in August 2019 because she was on a repayment plan. She testified the account was paid

after the creditor contacted her and agreed to settle the debt for \$112. She provided documents to support the settlement offer and that it was paid in May 2020. The debt is resolved. (Tr. 40, 43-45; GE 1; AE A, E)

The collection account in SOR ¶ 1.b (\$462) was for cable and Internet service. Applicant testified that she returned the equipment and owed a balance of \$228. She arranged a settlement agreement with the creditor to pay \$20 a month, but only made one payment last year, and did not follow through with the agreement. The debt is unresolved. (Tr. 45-47; GE 3, 4, 5)

The collection account in SOR ¶ 1.c (\$18,157) is for a car loan for a vehicle purchased in 2018. Applicant testified that she got behind a few times in her monthly payments, but she is still paying on the account and has possession of the car. The monthly payment is \$466. Her January 2022 credit report reflects that the account is past due \$9,710, and the current balance is \$15,618, which reflects that she has made payments, but they were insufficient to cover the past-due amount. She provided a document from the creditor indicating she had made a payment arrangement on February 20, 2022, to pay \$500. She did not provide evidence that this payment was made or the arrangement was to make monthly payments. The debt is unresolved. (Tr. 48-51; GE 3, 4, 5; AE C).

The charged-off account in SOR ¶ 1.d (\$12,834) is a vehicle repossession from 2015. Applicant testified that she received an IRS Cancellation of Debt Form 1099C. She provided a copy of the 2019 form reflecting the amount alleged as discharged. She testified that she filed the form with her income tax returns. This debt was not resolved. (Tr. 51-53; GE 3, 4, 5; AE D)

The charged-off debt in SOR ¶ 1.e (\$269) was for a personal loan Applicant obtained in 2012 or 2013 to improve her credit score. She testified that she made sporadic payments, and a year ago she contacted the creditor wanting to pay the debt. She testified her last payment was sometime last year. She does not have a monthly payment arrangement, but rather will make payments when she can until it is resolved. She provided a copy of her account statement from October 2021 to December 2021 that reflects a balance owed of \$219. The debt is unresolved. (Tr. 53-57; AE F)

The charged-off debt in SOR ¶ 1.f (\$554) is a store charge card. Applicant testified that she made payment arrangements to settle the account for \$332. She agreed to make six payments of \$55, but only made one payment last year and no other payments since. The debt is unresolved. (Tr. 57-58; GE 3, 4, 5)

Applicant testified that the delinquent medical debt alleged in SOR ¶ 1.g (\$364) was for medical equipment that was returned. She provided a document from the creditor showing her account has a zero balance. The debt is resolved. (Tr. 58-59; AE I)

The charged-off debt in SOR ¶ 1.h (\$711) is for a credit card. In Applicant's SOR answer she said payment arrangements had been made. She testified at her hearing that she did not have payment arrangements with the creditor. The debt is unresolved. (Tr. 59-62; GE 3, 4, 5)

The collection account in SOR ¶ 1.i (\$716) is for a credit card. In Applicant's SOR answer, she said she was going to validate the debt with the creditor and if it was confirmed then she would make payment arrangements. She testified that she contacted the creditor, but did not make payment arrangements. The debt is unresolved. (Tr. 62-63; GE 3, 4, 5)

The SOR alleges delinquent student loans in ¶¶ 1.j (\$1,251), 1.k (\$3,945) and 1.l (\$20,454). Applicant did not disclose these debts on her 2019 SCA. She stated in her SOR answer that she "was able to get account out of default. Was set up for a repayment program which included paperwork and documents and place[d] on a payment plan." (Answer to SOR) Her loans are in deferment due to the CARES Act, which provided a moratorium on student loan payments during the COVID-19 pandemic. (Tr. 63-72; GE 3, 4)

Applicant testified that she thought she had consolidated her student loans in 2009 or 2010. She also has other student loans. Her January 2022 credit report reflects student loan accounts totaling approximately \$77,917 opened from 2004 to 2008. They too are deferred. It is unknown if some of her student loans have been consolidated. She testified she contacted the creditor in the past and thought that her student loans were in forbearance. She was attending college sporadically, but not since 2014. She confirmed she made no payments towards her student loans from 2014 to 2020, when they were deferred due to the pandemic. Applicant's September 2019 credit reports lists the student loans alleged in SOR ¶¶ 1.j, 1.k, and 1.l as delinquent. (Tr. 63-72; GE 3, 4, 5)

Applicant provided a document from a collection company servicing the student loans alleged in the SOR. Due to the way Applicant copied the document, the date on the letter does not appear. The document notes that the total delinquent balance owed to the SOR creditor is \$27,069 and that Applicant had indicated a wish to rehabilitate the defaulted student loans. She was offered a repayment amount of \$5 a month and was required to sign the agreement. Applicant did not provide any other documents to show she has completed the paperwork required to participate in a rehabilitation program. When asked how she intended to resolve her student loan debt once the deferment expired, she said she would work out something she could afford. Applicant provided a statement in a post-hearing email. Regarding the student loans alleged in the SOR, she said that she made a few payments, but never completed a payment program. She had recently contacted the original creditor and the loans were in default. She spoke with a representative who mailed her a form to complete to request approval for a new repayment program. She was waiting for the forms. I note that regardless of her conversation with the creditor, the student loans are likely deferred under the CARES Act, and are not presently in a default status. (Tr. 63-73; AE G, H, J)

Applicant has two consumer accounts (1-\$334, 2-\$393) that are past due on her most recent credit report and are not alleged in the SOR. She opened Account 1 in August 2021, and it became past due in December 2021. Account 2 was opened in November 2020, and it became past due in October 2021. She obtained a loan (\$3,165) in December 2020 that is charged off. The date of last activity is May 2021. She had a credit card account opened in December 2020, last activity was April 2021, and it was charged off (\$655). Applicant leased an automobile, and it was repossessed in 2018 when she got behind in payments. The credit report lists the charged-off amount of \$5,557. Applicant testified that she was unaware a balance was owed on the vehicle and the creditor has not contacted her and she has not contacted them. Applicant testified that she incurred these debts when she was living on her own with her children and not living with her mother. Paying her monthly expenses was difficult. (Tr. 74-86; GE 5)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

Applicant has not sought any financial counseling. When interviewed by a government investigator in October 2019, she described her finances as a work in progress. She testified that that is still the case. She testified that she wants to improve her credit and can do better. She wants to be in a better place, financially. She does not maintain a budget. (Tr. 82-83, 94-96)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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's has numerous delinquent debts that she incurred beginning in 2012 that she is unable to pay. She also has student loans that were in a default status before they were deferred due to the pandemic. 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; and

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

Applicant attributes her financial issues to a period of unemployment, medical issues, and being a single mother. She has been aware that her financial issues were a security concern and attempted to begin repayment plans, but never followed through. Since receiving the SOR, she has accumulated additional delinquent debts. Applicant has resolved one delinquent debt through a settlement (SOR ¶ 1.a) and returned medical equipment to resolve another (SOR ¶ 1.g). She received an IRS Form 1099C that canceled her obligation on a car loan. This action does not constitute a good-faith payment. She has a past-due car loan and other unpaid delinquent debts. Her student loans were in default before they were deferred under the CARES Act due to the COVID-19 pandemic.

Applicant's delinquent debts are numerous and recent. Her more recent delinquent debts demonstrate that future issues are likely to recur. Her failure to take meaningful action on resolving the debts creates doubt about her reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply. Although Applicant's unemployment, medical issues, and child support were beyond her control, she failed to provide sufficient evidence that she acted responsibly under the circumstances. She began repayment programs, but defaulted on them shortly after they began. She accumulated additional delinquent debts after receiving the SOR. She has not had financial counseling. The evidence is insufficient that she has made good-faith efforts to resolve her debts. Applicant does not have a realistic plan for paying her debts or student loans when they come out of deferment. AG ¶ 20(b) has minimal application. AG ¶¶ 20(c) and 20(d) do 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 has numerous delinquent debts that are unresolved. She failed to follow through on repayment plans. She has student loans that were in default and are now deferred, but does not have a realistic plan for resolving them when the moratorium is over. Applicant failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.i:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge