



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



In the matter of:)	
)	
-----)	ISCR Case No. 21-01547
)	
Applicant for Security Clearance)	

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided sufficient evidence to mitigate the national security concerns arising from her problematic financial history. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 15, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on September 6, 2021, detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer (Answer) to the SOR on October 5, 2021 and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On December 17, 2021, Department Counsel

submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant was sent the FORM on December 22, 2021, and she received the FORM on January 3, 2022. She was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM (Response) on February 4, 2022. The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 7 and the Response are admitted without objection. The case was assigned to me on March 23, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old and is married with three adult stepchildren. She also has three adult children from a previous marriage. Applicant has worked as a staff accountant for her sponsor since April 2018. Prior to this, she worked in a similar capacity for another company from October 2009 to April 2018. (Item 3.)

Student Loans

The SOR alleged 10 delinquent student loans totaling \$66,739. Applicant admitted those allegations. (Items 1 and 2.) From August 2003 to May 2009, she took college courses and earned her associate's degree. Except for four months in 2009 when she was unemployed after a layoff, Applicant took courses while working full-time. In August 2009, just before resuming full-time employment in October 2009, Applicant continued taking college courses toward her bachelor's degree until December 2017. (Items 3 and 4.)

Applicant financed her college studies with student loans. Because she resumed college studies in August 2009, Applicant's loan repayments were deferred from then until December 2017, when she stopped her studies. In January 2018, Applicant was contacted by the lender advising that her loans were in arrears. The lender asked that she pay \$600 per month. Because Applicant could not afford that amount, she did not contest a July 2019 garnishment of wages of \$300 per month. Applicant believed that payment covered all of her delinquent student loans. (Item 4.)

Applicant has paid \$300 per month from July 2019 until April 9, 2020, when student loan payments were suspended due to Covid-19. That suspension was to be lifted on January 31, 2022. (Item 2.) On November 1, 2021, Applicant completed an ACH Authorization Form making monthly payments of \$730 to the lender beginning February 5, 2022. In advance of that Authorization, Applicant made payments of \$730 by check to the lender on November 1, 2021, December 1, 2021, and January 3, 2022. On January 11, 2022, Applicant completed a student loan Rehabilitation Agreement, which will (1) remove her student loans from default status; (2) make her eligible for remaining periods of deferment or forbearance, and; (3) make her eligible for new federal financial aid to

return to school. (Applicant's Response.) The record does not indicate when Applicant's student loans will be paid off. (Item 4.)

Medical Debts

In 2014 Applicant needed medical treatment and was treated until 2016. Before treatment began, she applied for co-payment assistance. Applicant believed that assistance had paid her treatment bills, until she received court papers in May 2017 showing she owed \$1,200 to her provider. Applicant contacted her doctor and set up a \$200 per month plan and paid that bill in full in June 2018. (Item 4.)

Beginning in December 2011, Applicant incurred medical bills for her then minor stepchildren (ages 15, 16, and 18). In addition, between 2014 and 2016, Applicant underwent three abdominal surgeries. As a result, she missed work, lost wages, and fell behind on bills. Applicant's medical bills totaled \$7,327. In June 2018, Applicant set up a plan to pay \$200 per month to pay those bills. Applicant paid those bills in full in August 2020 when she sold her house. (Item 4.) Applicant's most recent credit report shows all but one medical bill (for \$214) with zero balances due. (Item 7.) Applicant's medical accounts are not alleged in the SOR. (Item 1.)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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. Under Directive ¶ E3.1.15, an "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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to Guideline F 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes 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.

The SOR debts are established by the Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a) and 19(c) apply.

Guideline F 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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquencies occurred recently and persist to this day. I cannot find that AG ¶ 20(a) applies. The next inquiry is whether AG ¶ 20(b) or AG ¶ 20(d) apply.

It appears from the record that Applicant was current on her student loans until she stopped taking courses in December 2017. Not long after that, Applicant was contacted by the lender advising that her loans were in arrears and asking that she pay \$600 per month. Because Applicant could not afford that amount, she agreed to a \$300 per month wage garnishment in July 2019. From July 2019 until April 9, 2020, Applicant made the \$300 monthly payments. On that latter date, student loan payments were suspended due to the Covid pandemic. That suspension was to be lifted on January 31, 2022.

While continuing to make monthly student loan payments, Applicant was also paying off medical bills that she and her then minor stepchildren incurred between 2011 and 2016. Those bills totaled \$8,527. Applicant made two payment plans to defray those bills. Under those plans, Applicant paid \$200 per month to one provider and \$200 per month to a second provider. In spite of missing work and losing wages for her own medical reasons, Applicant paid both bills in full in June 2018 and August 2020.

In light of the upcoming end of the student loan payment suspension in January 2022, Applicant made three payments of \$730 each to her student loan lender in November 2021, December 2021, and January 2022. Applicant also set up automatic monthly transfers of that amount to her lender. Those steps qualified her for a student loan Rehabilitation Agreement that will remove her loans from default status and make her eligible for federal student loan financial aid.

Applicant took meaningful steps to address her student loans. She was current until she stopped taking college classes. Applicant adhered to the wage garnishment, that she did not contest. When the Government suspended her student loan payments, Applicant planned ahead and made pre-moratorium termination loan payments of \$730

per month beginning in November 2021 and continuing with automatic payments. From May 2017 and June 2018, applicant was also paying \$400 per month to medical providers for bills incurred by her and her children. She continued to pay one medical creditor \$200 per month until August 2020. No doubt those medical payments strained her student loan payments.

For AG ¶ 20(d) to apply, an applicant must show a meaningful track record of some form of debt repayment. See, e.g., ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008); ISCR Case No. 07-06482 (App. Bd. May 21, 2008). I find that Applicant showed a meaningful track record of debt repayment. I also find that under the circumstances, Applicant handled her medical debts responsibly. I considered that fact as weighing in favor of Applicant’s mitigating and extenuating circumstances and as part of my whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I find that AG ¶ 20(d) applies.

In addition, Applicant’s medical debts impacted her student loan payments. Those medical debts were caused by conditions largely beyond her control, and Applicant managed those debts and her student loan debts responsibly. Under AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment . . . unexpected medical emergency. . .), and the individual acted responsibly under the circumstances. I find that AG ¶ 20(b) applies.

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about her eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant mitigated 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a.-j.:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant national security eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge