



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



In the matter of:)
)
) ISCR Case No. 20-02659
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, and she mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 21, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR and requested a hearing before an administrative judge.

The case was assigned to me on January 25, 2022. The hearing was convened as scheduled on February 23, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted an email and attached documents that I have marked AE C through H and admitted without objection.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor, where she has worked since September 2018. She attended college from about 2003 to 2004 and from 2012 to 2014, and she is again attending college in pursuit of a degree. She has never married. She has a 21-year-old child. (Tr. at 19-20, 26-28, 41-42; GE 1, 5)

Applicant has a history of financial problems, which she attributed to periods of unemployment and underemployment and being a single parent. (Tr. at 18, 28-29, 39; GE 1-5) The SOR alleges 18 delinquent debts. However, the debts in SOR ¶¶ 1.d and 1.r are duplicate accounts. The 17 non-duplicative debts consist of seven defaulted student loans to the U.S. Department of Education totaling \$13,782; two medical debts totaling \$578; a deficiency balance of \$7,165 owed on an auto loan after the vehicle was repossessed; and seven miscellaneous delinquent debts totaling \$7,267.

Applicant started paying her debts after she obtained her current job. She paid several debts before the SOR was issued, including debts that were not alleged in the SOR. (Tr. at 20; Applicant's response to SOR; GE 2-5; AE A, B, D, H)

SOR ¶ 1.p alleges a \$158 delinquent debt to a collection company on behalf of a financial institution. The debt is listed by all three credit reporting agencies on the March 2019 credit report, with an activity date of February 2019. Applicant indicated that she had two accounts with the same collection company and financial institutions (only one was alleged in the SOR), and she paid \$400 on January 3, 2019, and \$321 on February 1, 2019, to resolve both debts. She provided documented proof of the \$400 payment on January 3, 2019. The two later credit reports do not list either debt. I find that Applicant owed \$721 on the two accounts, and both of the accounts have been paid. (Tr. at 36-37; Applicant's response to SOR; GE 2-5; AE A, H)

Applicant asserted that she paid the \$2,224 and \$750 delinquent debts (SOR ¶¶ 1.k and 1.l) owed to a collection company on behalf of the same creditor. She provided two copies of documentation that the \$750 account was paid by June 2019. Both accounts were reported by all three credit reporting agencies on the March 2019 combined credit report, with activity dates for both accounts of March 2016. The debts are not listed on the December 2019 or June 2021 Equifax credit reports. The debts did not "age off" the reports because they were not past the seven-year reporting window. I find that both debts have been paid. (Tr. at 36-38; Applicant's response to SOR; GE 2-5; AE B, E)

Applicant paid the \$211 telecommunications debt (SOR ¶ 1.n) in August 2019. She paid the \$1,577 charged-off furniture debt (SOR ¶ 1.e) in April 2020. She asserted that she paid the \$368 and \$210 medical debts (SOR ¶¶ 1.m and 1.o) and the \$147 public utilities debt (SOR ¶ 1.q). She did not provide supporting documentation, explaining that she changed financial institutions and no longer had access to all of her records. The debts are listed on the March 2019 credit report, but not the two most recent credit reports. (Tr. at 36; Applicant's response to SOR; GE 2-5; AE A, D)

Applicant initiated a payment plan for the \$2,200 delinquent debt to a collection company on behalf of a financial institution (SOR ¶ 1.d). She is to pay at least \$50 per month. She had not made the first payment when the record closed. The seven student loans are in a pause mandated for all federal student loans through at least September 2022. Because she is currently attending college, she will likely receive a deferment after the pause ends. (Tr. at 29-30, 34-36; Applicant's response to SOR; GE 2-5)

SOR ¶ 1.a alleges a \$7,145 charged-off auto loan. The vehicle was purchased and financed in about April 2013. It is unclear when it was repossessed, but Applicant stated that she thought it was in about 2014 or 2015. The March 2019 credit report indicated that \$7,875 was charged off in October 2013, with a balance of \$7,415. The December 2019 credit report indicated the account was charged off, with a high credit of \$14,869, a date of last action (DLA) of January 2015, and a balance of \$7,165. The June 2021 credit report indicated that \$14,869 was charged off (this amount does not add up, and is contradicted by the previous reports), with a balance of \$7,165. (Tr. at 31; Applicant's response to SOR; GE 2-5)

Applicant's finances have greatly improved. She has a good job at a major company that pays her well. If she receives a security clearance, her opportunities at the company will increase. Her child is an adult. She has not let any new debts become delinquent since before she started her job in 2018. With tuition assistance from her employer, she is paying for her current college education as she goes, without taking out additional student loans. She received financial advice from a counselor at her college. (Tr. at 19-20, 29-30, 40-41; GE 2-4)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in February 2019. She did not report any adverse information under the financial questions. She credibly denied intentionally providing false information about her finances. She inquired about how to fill out the questionnaire because there were things that she did not remember. She was told to do the best she could, and if anything came up in the investigation, it would be brought to her attention. At the time she submitted the SF 86, she had already paid two of the SOR debts and several non-SOR debts. A number of the other debts were old. After considering all of the evidence, including Applicant's age, education, experience, and credible testimony, I find she did not intentionally provide false information about her finances on the SF 86. (Tr. at 18-25, 34, 36; GE 1)

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 multiple delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.d and 1.r allege duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.r is concluded for Applicant.

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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed her financial problems to unemployment, underemployment, and being a single parent. She began paying her debts before she received the SOR. Her student loans are on hold, and she is currently attending college without taking out additional loans. She has a good job at a major company that pays her well. If she receives a security clearance, her opportunities at the company will increase. She has not let any new debts become delinquent since before she started her job in 2018.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a plan to resolve her financial problems, and she took significant action to implement that plan. She acted responsibly under the circumstances and made a good-faith effort to pay her debts. Her finances do not cast doubt on her current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

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 report any adverse information under the financial questions on her February 2019 SF 86. After considering all of the evidence, including Applicant's

age, education, experience, and credible testimony, I find she did not intentionally falsify the 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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and she mitigated 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:	For Applicant
Subparagraphs 1.a-1.r:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge