



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



In the matter of:)
)
 _____) ISCR Case No. 20-02893
)
 Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

04/28/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the national security concerns arising from her problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 25, 2019. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on January 25, 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, 217.

Applicant submitted an undated answer (Answer) to the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On December 1, 2021, Department Counsel submitted

the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant was sent the FORM on December 2, 2021, and she received the FORM on December 20, 2021. 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 January 20, 2022. The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 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 34 years old and is a college graduate. She has never married and has a daughter four years old. Since May 2019, Applicant has worked for a defense contractor. (Item 3.)

The SOR alleged that Applicant has eight delinquent debts totaling \$160,326. (Item 1.) The following sets forth the SOR allegations and Applicant's answers:

SOR ¶1.a.: Dept. of Ed. \$61,847	Answer: Admits. Making monthly payments. Documents show monthly payments of \$395.50 to begin in 3/2021. No document. shows payments made.*
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SOR ¶1.b.: Security Credit/Ed.Fin. \$29,316	Answer: Denies, believes it is a duplicate. Applicant's credit report (3/4/21) does not show this account but shows \$91,977 of total debt. Item 5 (3/24/20) and Item 6 (6/19/19) show this account in collection.
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SOR ¶1.c. and d.: Navient (\$11,666 & \$7,373, respectively)	Answer: Admits. Says she pays monthly. Document shows five payments of \$45 per month from 9/28/20 to 1/27/21. **
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SOR ¶1.e.: Credit First \$543	Answer: Admits. Forgot this account. Will pay it off.
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SOR ¶1.f.: Dept. of Ed. \$28,495	Answer: Admits. Refers to ¶1.a.*
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SOR ¶1.g.: Security Credit/Ed.Fin, \$20,873	Answer: Denies. Will work out a repayment if loan is legitimate. No
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documents show payment plan or dispute.

SOR ¶1.h.: En. Rec. \$213

Answer. Denies. Disputes. Response. shows paid in full.

*Response documents @ 10/6/20 show two loans of \$138,029 and \$65,789 with repayments to begin 3/1/21 at \$395/month. and \$188/month, resp. No documents show those payments being made.

** Response documents show six payments at \$45/mo. from 7/21 to 12/21.

The legal effect of those Findings of Fact are discussed below in the Analysis.

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 listed in 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 access to classified information 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 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.

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; 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. AG ¶ 20(d) requires an analysis of each SOR debt. That analysis follows:

SOR ¶¶1.a. and 1.f. Applicant has admitted these allegations. She claims that she has a monthly payment plan in place, but her documents do not support that claim. I find against Applicant on these two allegations.

SOR ¶1.b. Applicant denies this allegation and believes it is a duplicate. She cites the absence of this account on her credit report. That report, however, does not mention that debt or show that it has been resolved. The Government's evidence shows the account to be in collection. I find against Applicant on this allegation.

SOR ¶1.c. and d. Applicant's documents show five payments of \$45 per month from September 28, 2020 to January 27, 2021 and six payments of \$45 per month from July 27, 2021 to December 27, 2021. Applicant's documents show eleven months of payments from September 2020 to December 2021 with, however, an unexplained five month hiatus in payments from February 2021 to June 2021. This is not a sufficiently meaningful track record to establish that Applicant is enroute to resolving these debts. I find against Applicant on these two allegations.

SOR ¶1.e. Applicant claimed she forgot this account but would pay it. She submitted no documents that she paid this account. I find against Applicant on this account.

SOR ¶1.g. Applicant submitted no documents that she paid this account, has a payment plan in place, or disputes this account. I find against Applicant on this account.

SOR ¶1.h. Applicant's documents show she paid this account in full. I find in favor of Applicant on this account.

Two tenets of Appeal Board jurisprudence inform the above analysis. First, the Board has stated that it is reasonable for a Judge to expect applicants to present documentation showing that debts have been resolved or are being resolved. See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). Second, 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). Applicant failed on both points (except for SOR ¶1.h.). AG ¶ 20(d) does not apply.

Under AG ¶ 2(a), 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 questions about her eligibility and suitability for a security clearance. For these reasons, I conclude that 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
Subparagraphs 1.a.-g.:	Against Applicant
Subparagraph 1.h.:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge