



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



In the matter of:)
)
) ISCR Case No. 21-01555
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On August 27, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on March 9, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that she had 30 days from her date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. She received the FORM on March 21, 2022. As of April 27, 2022, she had not responded. The case was assigned to me on May 13, 2022. The Government exhibits included in the FORM (marked as Items 1-8) are admitted into evidence without objection. In its FORM, Department Counsel withdrew SOR ¶¶ 1.r and 1.s. There being no objection, SOR ¶¶ 1.r and 1.s are stricken from the SOR. Applicant did not provide any documents with her response to the SOR.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor for whom she has worked since July 2020. She earned a high school degree in 1994. She has taken some college courses intermittently over the years, but has not earned a college degree. She has been married and divorced twice. Her first marriage was from 1997 until 2006. Her second marriage was from 2013 until 2017. She has three adult children. She enlisted with the U.S. Army Reserve in February 2005 and earned an honorable discharge in September 2005, when she enlisted with the U.S. Army on active duty. She remained on active duty with the U.S. Army until February 2018. In February 2018, she earned an honorable discharge after being “medically retired.” She received 40 percent of her military pay after her retirement and also received a medical pension from the military at a 90 percent rating. While on active duty, she was deployed to Iraq from August 2010 until June 2011. She was granted a clearance in 2005 and 2017. (Items 4, 5)

The SOR alleges Applicant owes 19 delinquent debts totaling about \$51,000 (SOR ¶¶ 1.a-1.q, 1.t, and 1.u). The delinquent debts include, among other things, student loans, credit cards, medical debts, and a military overpayment. Applicant denied the debts listed in SOR ¶¶ 1.a, 1.n, 1.o, and 1.q. She admitted the remaining debts in the SOR; some with additional comment. Her admissions are adopted as findings of fact. I find that the SOR allegations are established through credit reports, Applicant’s admissions, and the information she provided during her interview in September 2020. (Items 1, 3, 5-8)

Applicant attributed her financial problems to bad financial decisions that her second former spouse made while they were married. She claimed that he controlled all of her finances and squandered almost \$100,000 of her money by making bad investments. She was unemployed from February 2018 until about August 2018 after she retired from the military and decided to take some time off. She was also unemployed from January 2019 until about July 2020 after she quit her job to move back home with her family because she was having financial difficulties. (Items 4, 5)

The \$9,493 debt alleged in ¶ 1.a has not been resolved. Applicant claimed that this debt was being paid through a military allotment during an unspecified period of time while she was in the military. Those payments stopped when she retired in February 2018. She provided no documentation to support her allegation that she had made payments on this account. The debt appears on Applicant’s 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The \$6,823 debt alleged in ¶ 1.b has been resolved. Applicant’s 2022 credit report reflects that this account was settled for less than the full balance. (Items 1, 3, 5-8)

The student loan debts alleged in ¶¶ 1.c and 1.d have not been resolved. Applicant presented no documentary evidence that she has made payments, disputed these debts, offered or negotiated payment agreements, or taken any significant action

to resolve these debts. These debts appear on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The credit-card debts alleged in ¶¶ 1.e and 1.f have not been resolved. Applicant presented no documentary evidence to show that she has made payments, disputed these debts, offered or negotiated payment agreements, or taken any significant action to resolve these debts. These debts appear on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The credit-card debts alleged in ¶¶ 1.g and 1.h have not been resolved. Applicant claimed that these are duplicate debts, but the information contained in the credit reports does not support this claim. Instead, despite having the identical balance, the credit reports reflect that these two accounts had different original creditors. Applicant presented no documentary evidence to show that she has made payments, disputed these debts, offered or negotiated payment agreements, or taken any significant action to resolve these debts. She also failed to provide documentary evidence showing that these debts concern the same account. These debts appear on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The \$687 credit-card debt alleged in ¶ 1.i has not been resolved. Applicant presented no documentary evidence to show that she has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt appears on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The \$495 loan debt alleged in ¶ 1.j has not been resolved. Applicant presented no documentary evidence to show that she has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt appears on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The \$480 credit-card debt alleged in ¶ 1.k has not been resolved. Applicant claimed that this debt was a duplicate of the debt described in ¶ 1.s, which has been stricken from the SOR. She failed to provide documentary evidence showing that these debts concern the same account. She presented no documentary evidence to show that she has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt appears on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The \$392 credit-card debt alleged in ¶ 1.l has not been resolved. Applicant claimed that this debt was a duplicate of the debt described in ¶ 1.r, which has been stricken from the SOR. She failed to provide documentary evidence showing that these debts concern the same account. She presented no documentary evidence to show that she has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt appears on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The \$279 credit-card debt alleged in ¶ 1.m has not been resolved. Applicant presented no evidence that she has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt appears on Applicant's 2020, 2021, and 2022 credit reports. (Items 1, 3, 5-8)

The medical debts alleged in ¶¶ 1.n, 1.o, and 1.q have not been resolved. Applicant denied these debts because she didn't recognize them and has medical insurance. For the medical debt listed in ¶ 1.n, Applicant acknowledged that her daughter was treated in the hospital, but that medical insurance should have covered any amount owed. Applicant presented no documentary evidence to show that she has made payments, disputed these debts, offered or negotiated payment agreements, or taken any significant action to resolve these debts. The debt described in ¶ 1.n appears on Applicant's 2020, 2021, and 2022 credit reports. The debts described in ¶¶ 1.o and 1.q appear on Applicant's 2021 and 2022 credit reports. (Items 1, 3, 5-8)

The \$100 lease debt described in ¶ 1.p has not been resolved. Applicant presented no documentary evidence that she has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt appears on Applicant's 2020 and 2021 credit reports, but not on her 2022 credit report. (Items 1, 3, 5-7)

The \$4,222 credit-card debt described in ¶ 1.t has not been resolved. Applicant presented no documentary evidence to show that she has made payments, disputed this debt, offered or negotiated a payment agreement, or taken any significant action to resolve this debt. This debt appears on Applicant's 2020 and 2021 credit reports, but not on her 2022 credit report. (Items 1, 3, 5-7)

The \$20,495 government overpayment described in ¶ 1.u has not been resolved. This debt resulted from Applicant receiving four to five months of full military pay after she retired. Applicant claimed that she mistakenly thought these monthly credits were her VA benefits. When the government demanded she repay the overpayments, she did not have enough money to do so. She has been repaying this debt through bi-weekly garnishments. While she provided no documentary evidence of these garnishments, her 2022 credit report reflects a diminished balance of \$15,332. This debt also appears on her 2020 credit report, but not on her 2021 credit report. (Items 1, 3, 5, 6, 8)

As of September 2020, Applicant's take-home income through wages and disability was \$4,942 per month. Her total monthly expenses were \$1,200 per month, leaving her with a net remainder of \$3,742 per month. She claimed that she will repay the delinquent debts that she thinks she owes after she investigates their validity. In February and October 2021, Applicant opened two new installment loans secured by vehicles. The loan amount for these vehicles was a combined total of about \$47,000. Her combined monthly payment on these vehicles is about \$943. Applicant is no more than four payments past due on an additional debt not listed in the SOR.¹ Applicant did

¹ I will not consider adverse information not listed in the SOR under the disqualifying factors, but I may consider it when applying matters of extenuation and mitigation, and for the whole-person analysis.

not respond to the FORM, so more recent information about her finances is not available. (Items 5, 8)

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 within DOD 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 delinquencies that includes student loans, credit-card debts, medical debts, and a government overpayment. The evidence is sufficient to raise the above disqualifying conditions and shifts the burden to Applicant to provide evidence in mitigation.

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;

(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 the actions of her ex-husband and his losing money on investments. She claimed that he was controlling and had sole authority over their finances. She was unemployed for several months at a time after taking time off after her retirement from the military and quitting a job in order to move so she could live with her parents. Applicant's spouse's losing money on investments was beyond her control. However, allowing him to have sole authority over her finances was arguably within her control. Similarly, taking time off after retirement from the military in 2018 and quitting her job in 2019 were within her control.

Applicant provided no documentary evidence of payments or favorable resolution of the vast majority of the SOR debts. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Her financial issues with respect to these debts are recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). She stated that she intends to pay the SOR debts to the extent that she owes them. 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).

Applicant's net monthly income evidences that she has the necessary funds to pay back at least some of her creditors. Instead, she has decided to incur additional debt by purchasing two vehicles. Despite having the income to pay her expenses, she has also become delinquent on an additional debt not listed in the SOR. Under the circumstances, this conduct is not responsible, nor does it show a good-faith effort to pay her overdue creditors

Credit reports evidence that Applicant has settled one of her debts for less than the full amount and has paid down the government overpayment. However, Applicant acknowledged that she has paid down the government overpayment through a garnishment. Debts repaid through a garnishment are not normally considered good-faith attempts to resolve a debt.

Applicant disputed some of the SOR debts. However, she provided no documentary evidence to substantiate the basis of her disputes. She also did not provide evidence of actions she took to resolve any of her disputes.

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. She presented no evidence to show she has participated in financial counseling or has a working budget. Her ongoing financial issues continue to cast doubt on her current reliability, trustworthiness, and good judgment. Financial considerations security concerns are not mitigated.

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 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. I have considered Applicant's honorable military service as well as her deployment to Iraq.

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:	Against Applicant
Subparagraph 1.b:	For Applicant

Subparagraphs 1.c-1.q: Against Applicant

Subparagraphs 1.r-1.s: Withdrawn

Subparagraphs 1.t-1.u: 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.

Benjamin R. Dorsey
Administrative Judge