



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



In the matter of:)
)
) ISCR Case No. 20-01027
)
Applicant for Security Clearance)

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*
06/07/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns raised by her delinquent private student loans. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on July 21, 2019. (Item 3) On June 30, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) Applicant answered the SOR on July 22, 2021, and requested a decision based upon the administrative record (Answer). (Item 2)

A copy of the file of relevant material (FORM), dated September 10, 2021, was provided to Applicant by letter dated November 22, 2021. Department Counsel attached as evidence to the FORM Items 1 through 7. Applicant was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She did not respond to the FORM. On March 17, 2022, the case was assigned to me.

Findings of Fact

Applicant is 35 years old, has been married since December 2012, and has no children. She has attended college for a number of years, as discussed below, but she does not have a degree. Applicant has worked as an administrative programs assistant for her current employer, a Defense contractor, since September 2017. This is her first security clearance application. (Item 3; Item 4)

The SOR alleged that Applicant has two delinquent private student loans, totaling \$136,575. In her response to the SOR, she admitted both allegations, but she claimed that: both accounts had been charged off; the creditor illegally placed both accounts in default status when her co-signer passed away in 2014; the creditor is barred by a four-year statute of limitations (SOL); and the debts no longer appear on her credit report. The debts alleged in the SOR were confirmed by Applicant's credit bureau reports (CBR) dated August 2019 and January 2020. (Item 2; Item 5 at 9; Item 6 at 1-2)

Applicant started attending college before 2007, in State A, and she continued to live and attend college in State A until 2012, when she moved to State B. She took online courses from 2015 until 2018, when she was in a car accident. She resumed taking courses in September 2019. (Department Counsel's memo states Applicant started attending college courses in State A in August 2000, and attended courses continuously, at three different institutions until September 2012. Applicant's SCA, that she completed in September 2019, asked her to disclose her education history dating back ten years. She disclosed attending two secondary institutions in State A, from September 2008 through September 2012, and her secondary schooling in State B.) (Item 2; Item 3; Item 4)

In her 2019 SCA, Applicant disclosed that her private student loans, totaling \$136,576, had been charged off by her creditor after "they forced [her] into default [status] in 2014 when they found out [her] grandmother was dying." According to Applicant, the SOL applied to these loans, it had passed, and there was a pending lawsuit against the creditor on behalf of borrowers like her. (Item 3 at 57)

When Applicant was interviewed by a Government investigator in October 2019, she was questioned regarding the status of her private and federal student loans. She disclosed that in 2014, she was unemployed, and her grandmother was sick; therefore, she was unable to make payments toward her private student loans. The student loan creditor did not offer her any payment plans; the accounts were placed in default status; and the balance on both loans were immediately due. Additionally, she claimed that the SOL applied to these loans; she did not have to pay the loans; she did not intend to make any payments; and she had never made any payments to either of the loans. (Item 4 at 2)

Applicant was living in State A when she opened the student loans alleged in the SOR. According to Applicant's August 2019 CBR, the \$47,437 student loan alleged in SOR ¶ 1.a, was "assigned" or opened in September 2007, and the \$89,138 student loan alleged in SOR ¶ 1.b was "assigned" or opened in January 2007. The last activity date for both accounts is listed as August 2019, and they were both charged off. Applicant's

January 2020 CBR, gives consist dates that the accounts were opened, but indicates that the last date of activity for both accounts was August 2013. An October 2019 loan statement indicates that Applicant's private student loan creditor was actively attempting to collect \$1,224.05 collectively for both student loans. (Item 5 at 9; Item 6 at 1-2; Item 7)

In her Answer to the SOR, Applicant reiterated that she believed her private student loan debts were no longer valid due to a four-year SOL and her creditor's illegal behavior. She provided no corroborating documentation to support these assertions. (Item 2) The SOL for private student loans in State A is ten years, and the SOL for private student loans in State B is four years. There is no evidence in the record that Applicant resided in State B prior to 2012, and the loans alleged in the SOR were incurred in 2007.

According to her 2019 SCA, Applicant was unemployed during the following periods: December 2012 to April 2013 (after she moved to State B); July 2013 to December 2014 (she indicated that she resigned from a position in July 2013 for another position with a raise but was then unemployed for 18 months); and July 2017 to September 2017. (Item 3)

Applicant traveled extensively after she married her husband in December 2012. She took the following foreign trips: Egypt, March 2014 (6-10 days); France, March 2014 (1-5 days); Mexico, November 2016 (1-5 days); France, April 2017 (1-5 days); United Kingdom, April 2017 (1-5 days); Italy, April – May 2017 (6-10 days); China, December 2017 (1-5 days); India, December 2017 (1-5 days); Mexico, January – February 2018 (6-10 days); Mexico, July 2018 (1-5 days); United Arab Emirates, December 2018 (1-5 days); Jordan, December 2018 (1-5 days); Japan, March 2019 (1-5 days); South Korea, March 2019 (1-5 days); Thailand, March 2010 (1-5 days); and China, March 2019 (1-5 days). (Item 3; Item 4)

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 concern under Guideline F (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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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; 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's various periods of unemployment may have negatively affected her ability to make payments toward her delinquent private student loans, which total over \$136,000; however, she failed to demonstrate that she acted responsibly to address her student loans in response to her financial setbacks. During the period in which she was unemployed, she was married to her current husband and able to take extensive foreign trips; therefore, in theory she should have been able to afford to negotiate a payment plan with the creditor for her private student loans. She admittedly, never made a single payment toward these loans. She did not provide proof of any efforts to establish a payment plan, such as documents showing communications with the creditors.

Applicant argued that her private student loans were resolved due to the statute of limitations, and relied upon State B's four-year SOL. However, she did not provide proof that the SOL for State A was not applicable in this case, as Applicant incurred these loans while residing and attending school in that jurisdiction. Applicant did not establish when she was required to start payments on her student loans. Her student loan payments may have been deferred while she was taking college courses. In state A, the SOL does not expire until 10 years after her most recent payment was not made. Regardless, the DOHA Appeal Board has held that an applicant's reliance upon the statute of limitations as a

rationale for not paying SOR creditors does not negate an Applicant's past conduct or failure to take more aggressive actions to resolve her delinquent debts.

Applicant provided no documentation to support her claims that her private student loan creditor behaved in an illegal manner when it defaulted her student loans. Nor did she provide proof of any actions she took to try to resolve her student loans in a timely manner or to resolve them after she regained employment in 2014. She told the government investigator that she had never made any payments toward these loans, nor did she intend to ever make any future payments toward these loans, indicating a lack of a good faith effort to resolve these debts. Mitigation under AG ¶¶ 20(a), 20(b), and 20(e) was not established.

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 conclude Applicant has not met her burden of proof and persuasion. She did not mitigate the financial considerations security concerns or establish her eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge