



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



In the matter of:)	
)	
)	ISCR Case No. 20-02653
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2022

Decision

GARCIA, Candace Le’i, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 9, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant, in her undated responded to the SOR (Answer), requested a hearing before an administrative judge. The case was assigned to me on May 7, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 5, 2021, scheduling the hearing for August 31, 2021. I convened the hearing as scheduled. (Answer; Tr. at 9-10)

At the hearing, Government Exhibits (GE) 1 through 4 were admitted without objection. Applicant testified; she did not call any witnesses or submit any documentation. At Applicant's request, I kept the record open until October 1, 2021, to allow her to submit documentation. By that date, Applicant submitted documentation which I collectively marked as AE A and admitted without objection. DOHA received the hearing transcript (Tr.) on September 8, 2021. (Tr. at 14-20, 63-65, 67; GE 1-4; AE A)

Findings of Fact

Applicant admitted all of the SOR allegations except SOR ¶¶ 1.r to 1.aa, 1.ee to 1.gg, and 1.jj, which she denied. She is 55 years old. She married in 1987, divorced in 2002, remarried in 2003, and divorced in 2010. As of the date of the hearing, she lived with her fiancé since 2016. She has three adult children. She graduated from high school in 1984 and attended some college but did not earn a degree. (Answer; Tr. at 6-7, 11, 23, 27-28; GE 1)

Applicant worked as a U.S. Government civilian from approximately 1991 to 1992, 1998 to 1999, and in 2014. She held inconsistent employment with minimal income and had periods of unemployment between 2009 to 2016, to include six months in 2009, one month in 2010, and from 2014 to 2016. Since 2016, she has primarily worked as an over-the-road (OTR) truck driver. In 2019, she became a working partner in her fiancé's trucking business. As of the date of the hearing and since approximately January 2020, her fiancé's company contracted with a DOD transportation company, for whom Applicant previously worked from February to June 2019. Applicant testified that her fiancé had a security clearance, and she has never held one. (Answer; Tr. at 7-8, 21-26, 28-34, 39-40, 48-51, 62; GE 1)

The SOR alleged that Applicant had 2 delinquent consumer accounts totaling approximately \$10,718 (SOR ¶¶ 1.a, 1.kk) and 35 delinquent medical accounts totaling approximately \$79,444 (SOR ¶¶ 1.b - 1.jj). The SOR allegations are established by Applicant's admissions in her Answer, 2020 security clearance application (SCA), and 2020 background interview, and by credit bureau reports from 2020 and 2021. All of the SOR debts are delinquently reported on the 2020 credit bureau report, and SOR debts ¶¶ 1.b, 1.d to 1.g, and 1.i to 1.m are delinquently reported on the 2021 credit bureau report. The 2021 credit bureau report reflects that Applicant paid SOR debts ¶¶ 1.a, 1.c, 1.h, 1.n to 1.q, 1.bb, 1.dd, and 1.ii. (Answer; GE 1-4)

Applicant attributes her delinquent debts to a relocation in 2009 for a job as a pastry chef in a restaurant that ultimately failed to open. From 2009 to 2014, she worked multiple low-paying jobs, had periods of unemployment, as previously discussed, and endured a failed relationship. She also suffered from physical and stress-related problems, for which she was prescribed multiple medications by various doctors and was hospitalized three times between 2014 and 2016. During this period, she did not have health insurance, and she was denied state housing assistance, Medicaid, food stamps, and disability benefits. Her mother passed away in 2016 from a terminal illness that depleted her mother's savings. Regarding this time in her life, Applicant stated that she ". . . made bad choices

in the people I could trust as well as life choices. I kept going downhill not knowing what else to do,” and “I hit rock bottom.” (Answer; Tr. at 21-26, 28-34, 39, 51-54, 61-62)

Applicant began to regain control of her life after she and one of her daughters were taken in by that daughter’s boyfriend. She realized, during this time, that a number of her problems stemmed from her multiple prescription medications, “but my real problems couldn’t be medicated away.” She testified that as of the date of the hearing, she was no longer medicated or seeing multiple doctors. In 2015, at age 49, she made a career change and learned to be an OTR truck driver. In the first several years, however, she continued to experience financial difficulties, because she was “learning the ropes, [and] gaining experience at low paying, low miles.” During this time, she also struggled to maintain health insurance for herself and her daughter, who suffered from costly health issues. As of the date of the hearing, she did not have health insurance. (Tr. at 21-26, 33-34, 41-42, 49, 51-54, 61-62)

In approximately 2016, Applicant met her fiancé, and he earned approximately \$20,000 annually as a self-employed OTR truck driver. Although they shifted their priorities to keep current on their essential financial obligations, which included a home, they suffered another setback in 2017, when her fiancé purchased a truck for his company and the truck immediately began having issues. As of the date of the hearing, they paid approximately \$17,500 for needed truck repairs only to find out that the truck was beyond repair. They purchased a newer truck one week before the hearing, through a \$95,000 loan taken out by her fiancé for which monthly payments of \$2,400 were scheduled to begin in October 2021. She estimated that she earned a minimal annual income of approximately \$20,000 as an OTR truck driver in 2018, and she did not earn any income in 2019 as a result of unsuccessfully attempting to lease a truck as an owner-operator. In addition, she contracted COVID-19 at the onset of the pandemic and business also suffered during the COVID-19 pandemic. She estimated that she earned a minimal annual income of \$5,600 in 2020 and 2021. They also had a house fire, which destroyed her medical records, and she has since had difficulty retracing her creditors to try to replace those records in order to address her delinquent medical debts. She testified that when she received the SOR in November 2020, “I had to face how deep in debt I was and began to pay off some of my debt, as things started to improve at the end of the year.” (Tr. at 21-26, 38, 40-44, 46-47, 59-63)

SOR ¶ 1.a is for a \$2,310 charged-off account for Applicant’s car that was repossessed in 2015. After she received the SOR, Applicant paid this debt in December 2020 with financial assistance from her fiancé. The 2021 credit bureau report reflects that this debt is paid. (Tr. at 42-43, 57-58; GE 3)

SOR ¶¶ 1.b to 1.jj are for 35 of Applicant’s delinquent medical debts, totaling approximately \$79,444. As previously discussed, Applicant does not know what these medical debts are for, as she has not been able to replace her medical records destroyed in her house fire. She acknowledged, as previously discussed, that she had medical debts from 2015 to 2016 related to her hospitalizations, emergency room visits, and medical care for herself and her daughter. She testified that she paid SOR ¶¶ 1.c, 1.h, 1.bb, 1.cc, 1.dd, 1.hh, and 1.ii in December 2020, after she received the SOR, and that she paid

SOR ¶¶ 1.n, 1.o, 1.p and 1.q in January 2021. The 2021 credit bureau report reflects that SOR debts ¶¶ 1.c, 1.h, 1.n to 1.q, 1.bb, 1.dd, and 1.ii are paid. She intends to resolve her remaining medical debts. (Tr. at 22-23, 31-35, 43-47, 49, 52-54, 57; AE A)

SOR ¶ 1.kk is for an \$8,588 debt placed for collection. This is for commercial driver's license training that Applicant's previous employer provided her in 2016. Applicant has to repay her previous employer for this training because Applicant left employment before the required conclusion of her one-year commitment. Applicant testified that she and her fiancé were saving to pay this debt. They had saved \$1,000 as of the date of the hearing, and they intended to apply this savings toward resolving this debt. (Tr. at 35-39)

Applicant earned her HAZMAT certification and Transportation Worker Identification Credential (TWIC) card. The former is required for drivers who will be hauling loads containing Department of Transportation-classified hazardous materials, while the TWIC card allows drivers to enter and travel port facilities unescorted. She testified that she has learned how to make sound financial decisions and understood the importance of good credit. She testified that she expected to owe \$2,000 in taxes for tax year 2020, and she and her fiancé planned to pay it using money he set aside in his savings. She acknowledged that she was not in a position to resolve her delinquent debts. Her future brother-in-law, a financial advisor, provided her with financial counseling. She also developed a household budget. (Tr. at 24-26, 35-39, 47-48, 54-63)

Policies

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(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."

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 Exec. Or. 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* Exec. Or. 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 was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

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; and,

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's circumstances, as previously discussed, are conditions beyond her control that contributed to her financial problems. The first prong of AG ¶ 20(b) partially applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. After she received the SOR, she paid the debts in SOR ¶¶ 1.a, 1.c, 1.h, 1.n to 1.q, 1.bb, 1.dd, and 1.ii. Applicants who wait until their clearances are in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). I find that ¶ 20(d) applies to SOR ¶¶ 1.a, 1.c, 1.h, 1.n to 1.q, 1.bb, 1.dd, and 1.ii.

Applicant has not sought professional tax assistance or debt counseling since she first encountered financial difficulties. She acknowledged that she was not in a position to resolve her delinquent debts. I also find that such behavior did not happen so long ago, was not infrequent, and did not occur under such circumstances that are unlikely to recur. It continues to cast doubt on her current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d) are not established as to SOR ¶¶ 1.b, 1.d to 1.g, 1.i to 1.m, 1.r to 1.aa, 1.cc, 1.ee to 1.hh, and 1.jj to 1.kk.

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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.m:	Against Applicant
Subparagraphs 1.n-1.q:	For Applicant
Subparagraphs 1.r-1.aa:	Against Applicant
Subparagraph 1.bb:	For Applicant
Subparagraph 1.cc:	Against Applicant
Subparagraph 1.dd:	For Applicant
Subparagraphs 1.ee-1.hh:	Against Applicant
Subparagraph 1.ii:	For Applicant
Subparagraphs 1.jj-1.kk:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge