



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



In the matter of:)	
)	
)	ISCR Case No. 21-01789
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:
Pro se

July 22, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 19, 2019. On November 30, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 27, 2021, over two years later, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 15, 2022. The case was assigned to me on February 28, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on March 30, 2022. The case was heard as scheduled on April 25, 2022.

The Government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on her own behalf. She presented no documents at the hearing. DOHA received the transcript of the hearing on May 17, 2022. (Tr. at 10-14.)

Findings of Fact

Applicant is 32 years old and single. She graduated from high school in 2007 and took some college courses in 2009 and 2010 and again in 2012 and 2013, but she has not yet earned a degree. Since October 2017, she has been employed by a defense contractor assigned to work at a military installation. She was recently promoted to be a quality assurance coordinator. She is about to begin a second job as a part-time delivery driver. She is a first-time applicant for a security clearance and is seeking to obtain a clearance in relation to her employment with the defense contractor. (Tr. at 4, 15-16, 24, 41, 45.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges that Applicant is ineligible for clearance because she is financially overextended with delinquent debts and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR identifies ten past-due or charged-off debts owed by Applicant totaling about \$15,600 (SOR 1.c through 1.l). Her two largest debts are for delinquent student loans totaling about \$13,000 (SOR 1.k and 1.l). The SOR also alleges that she failed to file her Federal and state tax returns in tax years (TYs) 2010, 2011, 2013, and 2014 (SOR 1.a and 1.b). In her Answer, Applicant admitted all of the SOR allegations. The existence and amounts of these debts is also supported by credit reports in the record dated September 28, 2019, and February 15, 2022. (GE 3 and 4.)

The current status of the SOR allegations is as follows:

1.a and 1.b. Failure to file Federal and state tax returns for TYs 2010, 2011, 2013 and 2014. Due to the passage of time, Applicant was unable to explain at the hearing why she failed to file tax returns for the four years in question. Applicant was able to locate the documentation she needed to file for TY 2014. In early 2022 she mailed her Federal and state tax returns for that year. She owed no additional taxes for TY 2014. Applicant has

received a notice from the IRS that she owes about \$1,600 in back taxes for TY 2016. She intends to enter into a payment plan with the IRS to pay this delinquent tax debt. She is currently paying past-due state taxes pursuant to a recent voluntary payment plan she negotiated, which provides for the automatic withdrawal of \$100 from her biweekly paychecks. She is uncertain what tax year is being paid under this plan. The state tax debt is about \$500. She has timely filed all of her returns for TYs after 2015 and has an extension to file her TY 2021 returns. (Tr. at 17-22.)

With respect to TY 2010, 2011, and 2013, Applicant has been unable to reach an IRS employee to obtain the needed information for the prior years. The IRS phone message states that tax information is only available for TYs 2018 and later. She has considered seeking help from the tax professional who prepared her most recent returns, but has not yet done so. She noted that she was a full-time student in 2009 and 2010 and had no income. (Tr. at 17-24.)

1.c. Collection debt in the amount of about \$315. This debt is for a payday loan account that Applicant opened in 2017 or 2018 and could not repay. Before she applied for a security clearance, she contacted this creditor and tried to resolve the debt with a payment plan. The collection agency refused and demanded full payment. Since then she has not repaid this loan. This debt is not resolved. (Tr. at 24, 26-27.)

1.d. Collection debt in the amount of about \$377. This debt is owed for internet services and unreturned equipment. Applicant could not pay the original creditor in about 2016 or 2017. The collection agency for the creditor demanded full payment of the debt, which Applicant could not pay. This debt is not resolved. (Tr. at 27-28.)

1.e. Collection debt in the amount of about \$172. This debt is also owed for internet services and unreturned equipment. This debt is not resolved. (Tr. at 28-30.)

1.f. Collection debt in the amount of about \$178. Applicant testified that this account is with the same creditor and the same collection agency as the debt in SOR 1.e, but it is not a duplicate of SOR 1.e. This debt is not resolved. (Tr. at 30-31.)

1.g Delinquent medical debt in the amount of \$1,168. This debt is for emergency room medical services in 2017 or 2018. Applicant's insurance company paid its share of the bill, and the unpaid balance is Applicant's share of the bill. The creditor refused to accept partial payments pursuant to a payment plan. This debt is not resolved. (Tr. at 31-32.)

1.h Delinquent medical debt in the amount of \$2,044. This debt is for medical services. Applicant is unsure what services are covered by this bill. Applicant has not paid this debt. This debt is not resolved. (Tr. at 32.)

1.i. Collection debt in the amount of about \$202. This debt is for a pet medical insurance policy that Applicant was unable to pay. The creditor demanded a payment for

the full amount of the debt, and Applicant could not afford to pay it. This debt is not resolved. (Tr. at 32-33.)

1.j. Collection debt in the amount of about \$94. Applicant is uncertain about the nature of this debt, and she has not paid the creditor. This debt is not resolved. (Tr. at 33.)

1.k Student loan debt in the amount of about \$4,770 placed for collection. Applicant initially tried to repay this student loan with small payments, but was unable to continue paying it. She has not tried to rehabilitate the student loan and begin paying on normal payment terms. This debt is not resolved. (Tr. at 34, 42.)

1.l Student loan debt in the amount of about \$8,101 placed for collection. The current status of this debt is the same as the debt in SOR 1.k. This debt is not resolved. (Tr. at 34.)

Government Exhibit 3, the most recent credit report in the record, lists three additional delinquent debts. One is a credit-card debt in the amount of \$578. This account was opened in 2019 and was sold to a collection agency in November 2021. The second debt is also for a credit-card account that was opened by Applicant's mother under Applicant's name. The amount of the delinquent debt is \$658. Her mother has agreed to repay this debt. Applicant is also delinquent on her car loan. She is paying that delinquent debt and has retained possession of the car. (Tr. at 34-38; GE 3 at 4-6.)

Mitigation

Applicant admitted that she was irresponsible with her credit when she was young. She would take out loans to pay debts and then be unable to repay the loans. Applicant testified about her plan to pay the debts she believes she owes. She recently received a promotion and a pay raise and has just begun working at a second job that permits her to work flexible part-time hours. She now has the additional income to begin paying her debts and repairing her credit in the future. (Tr. at 25-26.)

Applicant has not sought financial counseling though her mother has encouraged her to talk to a counselor at Applicant's bank. After she pays her monthly living expenses, she has little or no money left over. She expects to make a gross amount of about \$600 per week working at her second job and intends to use that money to begin paying down her debts. She hopes to pay off her debts by the end of 2022, with the exception of her student loans, which are too large to repay without a payment schedule. (Tr. at 34-35, 38-43.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

As of the date the SOR was issued, Applicant owed approximately \$15,600 for ten past-due debts, including two delinquent student loans. She also failed to file her Federal and state tax returns for four years, the most recent of which was TY 2014. These facts establish *prima facie* evidence for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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, or a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Overall, Applicant has not established any of the above mitigating conditions. Her plans for the future may help her begin to pay her debts, but until she has established a track record of earning additional income through her new second job and begun paying her debts, it is too soon to apply any of the above mitigating conditions. She partially mitigated her tax filing delinquency, but she also disclosed at the hearing that she has two previously undisclosed tax debts.

In support of this conclusion, I cite the Appeal Board's decision in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) for the proposition that the adjudicative guidelines do not require that an applicant be debt-free, but that more than a plan is required. The Board's guidance for adjudications in cases such as this is the following:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Given her available resources, Applicant has developed a pragmatic approach to the repayment of her past-due debts. She has not shown, however, that her current financial status is stable. She has recently incurred additional delinquent commercial and tax debts that also need to be repaid. Moreover, she has not taken significant actions to implement her plan and to determine how she will file her back tax returns and rehabilitate her delinquent student loans. She has not mitigated the financial concerns set forth in the SOR. Paragraph 1 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has failed to mitigate the security concerns raised by her financial situation. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.l:

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 grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge