



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



In the matter of:)	
)	
)	ISCR Case No. 20-02951
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
 For Applicant: *Pro se*
 08/01/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from her charged-off and delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant last submitted a security clearance application (SCA) on October 18, 2017. On July 16, 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 on August 4, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on February 28, 2022.

The hearing was convened by video teleconference on May 16, 2022. Government Exhibits (GE) 1 through 7, and Applicant’s Exhibits (AE) A-C were admitted in evidence without objection. After the hearing, I held the record open to provide Applicant with the opportunity to submit additional documentary evidence. She timely submitted documents that I marked as Appellant’s Exhibits (AE) D–P, and admitted in evidence without objection.

Findings of Fact

In her Answer, Applicant admitted all of the SOR allegations (§§ 1.a-1.m). Her admissions are incorporated into my findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 38 years old. She has a six-year-old son. She cohabitated with her boyfriend, who is her son's father, until 2021. She now lives with family to reduce her monthly expenses. She earned a bachelor's degree in 2006. She has worked as a financial analyst for a defense contractor since 2009. (Tr. 17– 20, 38; GE 1)

In her testimony, Applicant attributed her financial problems to the early-2016 period. In March 2016, Applicant gave birth to her son eight weeks early. She was on maternity leave for 12 weeks after his birth, and was paid 60 percent of her salary during that time. The baby's premature birth also created hospital bills for her. Applicant stated that SOR §§ 1.i-1m are the medical debts related to his birth that insurance did not cover. (Tr. 20-21, 28-30)

Applicant purchased her home in 2014, and it was foreclosed upon in early 2017. At that time, her boyfriend had agreed to split their household expenses each month. She claimed that he was unable to do so during that two-year period because he was in-between jobs. The record shows that he was unemployed twice in 2014, for about four months the first time, and for about a month the second time. He was consistently employed after 2014. She tried to sell the home before foreclosure; however, they had a flood in the basement, which prevented a sale. (Tr. 42-44, 50-58; AE H, I)

In May 2021, there was a fire in Applicant's apartment building. Her rental unit and belongings suffered water damage from this incident. She was displaced for most of the month. Her losses were covered by insurance, and her out-of-pocket expenses were less than \$1,000. Before renting another unit, she decided to move-in with her mother to reduce her expenses. Since her move, her boyfriend was supposed to provide her with funds for child support, but he has not done so, and she has not taken any action to obtain it. (Tr. 33-39, 50-58; AE H)

In February 2022, Applicant required treatment and examination at the hospital. She stated that her bills from that event were about \$1,042. She asserted that she is paying those bills first, before addressing her other delinquent debts. (Tr. 40; AE D)

In August 2018, Applicant was asked about twelve of the SOR debts by a government investigator. She stated that she was going to request validation of six, and asserted that she would contact the creditors to make payment arrangements if the debts were hers. She admitted responsibility for the other six debts, and stated that she planned to contact the creditors to make payment arrangements. Only one of these twelve debts has been resolved in the last four years. (GE 3)

Applicant submitted a monthly budget. Her greatest monthly expense is for her car, which altogether costs her \$915 each month. She also spends about \$1,300 monthly on payments for her credit cards, a personal loan, and a student loan. She is also paying \$200 monthly for her recent medical bills, and \$150 towards the judgement alleged in SOR ¶ 1.a. She has about \$500 left over at the end of the month. About \$100 of that goes into her savings, and the rest is spent on incidentals. She has no other funds leftover at the end of the month for other debt payments. She stated that after her recent hospital bills are paid, she plans to pay her other medical debts, and later her delinquent consumer debts. (Tr. 48; AE D, E, K, L)

The SOR alleges 13 delinquent debts, totaling about \$51,000. The status of the debts are as follows:

SOR ¶ 1.a is a judgement entered against Applicant in December 2019 for \$4,444. The creditor is a collection agency collecting a delinquent consumer debt. A writ of garnishment was issued in 2020, but the records show she is making monthly payments of \$150. The balance as of May 2022 was down to \$1,767. (Tr. 21-22, 30-31; GE 7; AE B; M, N).

SOR ¶ 1.b is a credit card account that was charged-off for \$21,894. Applicant has not taken action on this debt. (Tr. 21-22, 31; GE 4, 6)

SOR ¶ 1.c is an unsecured debt that was charged-off for \$7,371. Applicant has not taken action on this debt. (Tr. 23, 31; GE 4, 6)

SOR ¶ 1.d is a credit card account that was charged-off for \$6,201. The last activity on this account was in 2014. Although Applicant claimed that this debt was being paid, she did not provide documentation showing that she has taken any action on this account. (Tr. 22-24, 32, 45; GE 4)

SOR ¶ 1.e is a consumer debt that was charged-off for \$1,352. Although Applicant claimed that this debt was being paid, she did not provide documentation showing that she has taken any action on this account. (Tr. 23-24, 32; GE 4, 6)

SOR ¶ 1.f is a credit card account that was placed for collection for \$3,012. The last activity on this account was in 2015. Applicant paid a settlement on this account in 2019. It is now resolved. (Tr. 23-24, 32, 44-47; GE 5; AE P)

SOR ¶ 1.g is a credit card account placed for collection for \$1,200. The last activity on the account was in 2016. Applicant paid a settlement on this account in 2019. It is now resolved. (Tr. 23-24, 32, 44-47; GE 5; AE O)

SOR ¶ 1.h is a credit card account that was placed for collection for \$4,408. Although Applicant claimed that this debt was being paid, she did not provide documentation showing that she has taken any action on this account. (Tr. 23, 32; GE 6)

SOR ¶¶ 1.i - 1.m are medical debts placed for collection in the total amount of \$1,338. Applicant attributed these debts to the birth of her son in 2016. Applicant stated that she will pay these after she completes repayment of her recent medical debt from 2022. (Tr. 23, 29-30; GE 6)

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 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;

The SOR debts are established by the credit reports in the record, and Applicant’s admissions. AG ¶¶ 19(a) and 19(c) apply.

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

Applicant's \$1,338 of medical debt (§§ 1.i-1.m) originating from her son's premature birth occurred under circumstances that are unlikely to recur. This does not apply to her \$49,662 of consumer debts (§§ 1.a-1.h). The date of last activity for two of the debts (§§ 1.d and 1.f) precedes her son's birth and financial problems in 2016. Applicant has been consistently employed since 2009. She has only resolved two of the SOR debts (§§ 1.f and 1.g) in the last six years. She has not provided sufficient documentation showing that the other debts cited in the SOR are being paid (except the judgment in §1.a), or have been resolved. Despite her promises to pay, her current budget shows that she does not have means to address these debts anytime in the near future. Promises to pay, which she has been making since 2018, are not a substitute for a meaningful track record of payments and financial responsibility. Her budget shows that she now has over \$20,000 of additional consumer debt. Her failure to pay her charged-off and delinquent debts is recent, not isolated, and ongoing. This continues to cast doubt on her current reliability, trustworthiness, and good judgment. AG § 20(a) applies to §§ 1.i-1.m, but it does not apply to §§ 1.a-1.h.

AG § 20(b) partially applies because Applicant's medical debts (§§ 1.i-1.m) originating from her son's premature birth occurred due to circumstances beyond her control. However, she did not provide sufficient documentation showing that she acted responsibly in regard to these debts. There is insufficient evidence to show that her consumer debts (§§ 1.a-1.h) occurred under circumstances beyond her control, and that she acted responsibly under the circumstances. AG § 20(b) does not fully apply.

AG § 20(d) applies to §§ 1.f and 1.g because Applicant resolved these debts in 2019. It does not apply to § 1.a because it is a judgment, and the payments are not voluntary. She did not provide sufficient documentation to show that she has undertaken a good-faith effort to repay or resolve the remaining SOR debts. AG § 20(d) does not apply to §§ 1.a –e, and 1.h-1.m.

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 also considered her letters of recommendation. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of six of Applicant's charged-off and delinquent consumer debts under Guideline F.

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 – 1.e:	Against Applicant
Subparagraphs 1.f – 1.g:	For Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i – 1.m:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge