



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



In the matter of:)
)
) ISCR Case No. 21-01673
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

August 2, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On February 3, 2021, Applicant submitted a security clearance application (e-QIP). (Item 2.) On August 6, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline J, Criminal Conduct. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on August 15, 2021. (Item 1.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on March 3, 2022. A complete copy of the File of Relevant Material (FORM), containing seven Items was

received by Applicant on March 15, 2022. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a response to the FORM dated April 14, 2022, which was admitted into evidence without objection as Applicant's Exhibit A. DOHA assigned the case to me on June 21, 2022. Items 1 through 7 will hereinafter be referred to as Government Exhibits 1 through 7.

Findings of Fact

Applicant is 30 years old, and unmarried with no children. She has a Bachelor's degree. She holds the position of Tech 1. She is seeking to obtain a security clearance in connection with her employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because she made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

The SOR alleges that Applicant has fifteen delinquent accounts totaling in excess of \$64,000, consisting mainly of student loan debt, and several other miscellaneous debts. Applicant admits all of the debts listed in the SOR. Credit reports of the Applicant dated February 25, 2021; and March 2, 2022, confirm the indebtedness. (Government Exhibits 4 and 5.)

Applicant attended a University from August 2010 to May 2014. She obtained student loans totaling approximately \$52,000 to attend college. Although she worked part-time while going to school, she did not earn much money, and she fell into debt, simply trying to support herself. After completing her bachelor's degree, she found employment, but did not earn enough money to support herself and make payments toward her student loans. Applicant's income tax refunds for tax years 2017 and 2018 were garnished and placed toward her student loan indebtedness.

Applicant began working for her current employer in January 2021. Understanding that in order to be eligible for a security clearance she must show financial responsibility, Applicant has recently been working diligently to get her student loans in order. On March 31, 2022, Applicant applied for and was approved for an Income Driven Payment Plan with the Government to pay her student loans. She brought her loans out of default, which required that she make a down payment of \$895. She had all of her student loans consolidated, and a monthly loan payment of \$122 was scheduled to start February 2022, and continue on a monthly basis until resolved.

The following delinquent debts set forth in the SOR are of security concern:

1.a. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$9,807. The debt has been brought out of default, consolidated with her other student loans, and she is making regular monthly payments to resolve the debt.

1.b. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$8,334. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.c. A delinquent debt is owed to the U.S. Department of Education for an account that was charged off in the approximate amount of \$8,146. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.d. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$6,321. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.e. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$6,305. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.f. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$5,438. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.g. A delinquent debt is owed to the U.S. Department of Education for an account that was charged off in the approximate amount of \$4,586. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.h. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$4,229. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.i. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$3,320. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.j. A delinquent debt is owed to the U.S. Department of Education for an account that was placed for collection in the approximate amount of \$2,079. The debt has been brought out of default, consolidated with her other student loans, and she is making a regular monthly payment to resolve the debt.

1.k. A delinquent debt is owed to a creditor for a medical account was placed for collection in the amount of \$646. Applicant claims that she has made payment arrangements with this creditor. (Response to SOR.) There is no documentary evidence to support this claim. The debt remains owing.

1.l. A delinquent debt is owed to a creditor for a medical account was placed for collection in the amount of \$172. Applicant claims that she has made payment arrangements with this creditor. (Response to SOR.) There is no documentary evidence to support this claim. The debt remains owing.

1.m. A delinquent debt is owed to a creditor for a medical account that was placed for collection in the approximate amount of \$150. Applicant stated that she has made numerous attempts to contact someone about the debt but has been unsuccessful. She plans to pay the debt soon. The debt remains owing.

1.n. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$149. In her response to SOR dated August 15, 2021, Applicant stated that she made payment arrangements with the creditor to resolve the debt in full for \$153.97 on September 10, 2021. There is no documentary evidence to show that she paid the debt. The debt remains owing.

1.o. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$4,650. In her response to the SOR dated August 15, 2021, Applicant stated that the creditor agreed to settle the debt for \$1,108.62. Applicant planned to pay the debt on November 1, 2021. There is no documentary evidence to show that she paid the debt. The debt remains owing.

Guideline J – Criminal Conduct

The Government alleged that Applicant is ineligible for a clearance because she has engaged in criminal conduct that creates doubt about her judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

In June 2019, Applicant was arrested and charged with Driving While Intoxicated, (DUI) 1st offense. Applicant's blood alcohol level at the time of the arrest was .15 -.20% registering a BAC of .16. Applicant was found guilty and sentenced to 12 months in jail with 11 months, 25 days suspended, a fine, and supervised probation. Applicant stated that after her conviction, she enrolled in and successfully completed a Substance Abuse Counseling Program, surrendered her driver's license for one year as required, paid the fine, and completed the community service. (See Applicant's Response to FORM.)

In December 2019, Applicant was charged with a probation violation for Failure to Surrender to the Sheriff's Office and a warrant was issued for Applicant's arrest. Applicant was found guilty of contempt and a jail sentence of 4 days was imposed. She explained that she missed the cut off time to turn herself in. Her excuse was that she was working late hours at her job. It was too difficult for her to be expected to be at the Sheriff's Office in the early morning after working late the night before, and she missed it. (Applicant's Answer to SOR.)

In January 2020, Applicant was charged with a probation violation for Failure to Surrender the Sheriff's Office and a warrant was issued for Applicant's arrest. The Charge was dismissed and Applicant was ordered to serve straight time. Applicant stated that she missed the cut off time to turn herself in, once again, because the weekends were not working for her. As a result, the court imposed seven straight days in jail. (Applicant's Answer to SOR.)

Letters of recommendation from her Field Operations Manager, and her supervisor attest to her strong work ethic, motivation, and commitment to the tasks she is assigned. Applicant began her employment as a temporary employee in 2020, and was offered a full time position in 2021. She has grown-up on the job, and has made great strides at improving herself. She was selected out of 30 team members to attend special training courses, costing the company \$10,000. Her performance at this training was outstanding. They recommend her for security clearance. (Applicant's Response to FORM.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the

evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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 as to 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant incurred excessive delinquent debt totaling in excess of \$64,000, most of which was student loan debt for her college education. She also has several delinquent medical bills. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20;

- (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), 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 has made significant headway toward resolving her delinquent debt. She is currently making regular monthly payments to resolve her large student loan debt, and is setting up payment arrangements with her creditors concerning her much smaller delinquent medical debts. She has provided sufficient evidence in mitigation. This shows good judgment, responsibility and reliability. Accordingly, this guideline is found for the Applicant.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in

combination cast doubt on the individual's judgement, reliability, or trustworthiness; and

- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. Neither of the conditions are applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's criminal record reflects one arrest and conviction for DUI in 2019, and two back-to-back charges, one in 2019, and the other in 2020, for violating her probation by failing to surrender on the warrant issued against her. Evidently she did not complete the community service requirements she was sentenced to complete in a timely fashion. Her most recent violation occurred in 2020, just two years ago. Applicant's conduct demonstrates poor judgment, immaturity, and a total disregard for the law. Her criminal conduct is recent and inexcusable. Based upon this criminal record, Applicant has not established that she is sufficiently reliable and trustworthy to access classified information. Her behavior gives rise to serious concerns about her judgment, reliability, and trustworthiness. The before-mentioned disqualifying conditions have been established and 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 relevant facts and circumstances surrounding this case. I conclude Applicant has mitigated the Financial Considerations concern, but has not mitigated the Criminal Conduct security concern.

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:	FOR APPLICANT
Subparagraphs 1.a.: through 1.n:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a.: through 1.c:	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.

Darlene Lokey Anderson
Administrative Judge