



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



In the matter of:)	
)	
)	ISCR Case No. 21-02298
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith Esq., Department Counsel
For Applicant: *Pro se*

August 31, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 4, 2019, Applicant submitted a security clearance application (e-QIP). (Item 3.) On March 10, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865 (EO), *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 March 11, 2022. (Item 2.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on May 5, 2022. A complete copy of the File of Relevant Material (FORM), containing five Items was received by Applicant on May 29, 2022. Included in the Government’s written case is

an Amendment to the Statement of Reasons. In the amendment, the Government adds two additional allegations as part of allegations 1.u. and 1.v. In reference to 1.u., the Government adds that, "Applicant owes a past due balance in the approximate amount of \$3,138. As of the date of the Statement of Reasons, the balance is unpaid." In reference to 1.v., the Government adds that, "Applicant owes a past due balance of approximately \$1,000. As of the date of the Statement of Reasons, the balance is unpaid." Applicant was also advised to provide answers to these allegations in his Response to the FORM. If Applicant does not provide answers for the new allegations, the Government requests that the administrative judge find that her silence be considered as a denial to the new allegations. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant failed to respond to the FORM. Based upon Applicant's silence by not responding to the FORM in any regard, I will allow the Government's requested amendments, and view Applicant's silence as a denial of the amended allegations. DOHA assigned the case to me on August 9, 2022. Items 1 through 5 will hereinafter be referred to as Government Exhibits 1 through 5.

Findings of Fact

Applicant is 40 years old, and divorced. She has a Bachelor's degree. She holds the position of Field Depot Technician II. 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 incurred significant delinquent debt, consisting of twenty delinquent accounts totaling in excess of \$159,596. These debts include a vehicle repossession, student loan debt, and other miscellaneous consumer debts. Applicant also failed to file Federal and state income tax returns for tax years 2017 through 2019. Applicant admits all of the allegations, listed in the SOR, except 1.p. Applicant's credit report dated February 22, 2022, confirms the indebtedness. (Government Exhibits 4 and 5.)

Applicant began working for her current employer in April 2018. She applied for a security clearance on September 4, 2019. During her subject interview, as part of her background investigation, she stated that her financial problems began when she divorced her husband, and became a single-income household. Applicant and her husband divorced in June 2016. In her answer to the SOR, Applicant states that she is currently seeking assistance to clear all debts from her financial record. (Government Exhibit 2.) There is no documentary evidence in the record to show that anything has

been accomplished in this regard. All of the delinquent debts listed in the SOR remain owing.

Applicant also failed to file Federal and state income tax returns for tax years 2017, 2018, and 2019, in a timely fashion. During her subject interview, Applicant explained that she did not file her returns as result of the divorce, she was “in a rut and overwhelmed financially.” (Government Exhibit 4.) Applicant eventually filed these income tax returns in December 2021. The Government alleges that Applicant owes a past due balance in Federal taxes in the amount of approximately \$3,138; and a past due balance to the state in the amount of approximately \$1,000. Government Exhibit 4, the interrogatories Applicant completed concerning “Federal Taxes,” confirms this indebtedness.

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

1.a. A delinquent debt is owed to a creditor for an account that was charged off in the approximate amount of \$28,558. This was a vehicle that was repossessed as Applicant could no longer afford to make the payments. (Government Exhibits 2 and 4.) The debt remains owing.

1.b. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$13,853. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.c. A delinquent debt is owed to a creditor for an account that was placed for collection the approximate amount of \$13,596. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.d. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$13,419. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.e. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$13,404. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.f. A delinquent debt is owed to a creditor for a student loan account that was charged off in the approximate amount of \$13,144. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.g. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$9,888. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.h. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$8,660. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.i. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$8,214. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.j. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$7,227. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.k. A delinquent debt is owed to a creditor for an account that was placed for collection in the amount of \$7,108. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.l. A delinquent debt is owed to a creditor for an account that was charged off in the amount of \$5,489. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.m. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$5,208. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) 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 \$3,905. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.o. A delinquent debt is owed to a creditor for a student loan account that was placed for collection in the approximate amount of \$2,257. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.p. A delinquent debt is owed to a creditor for a cable account that was placed for collection in the approximate amount of \$356. (Government Exhibits 2 and 4.) Applicant states that this is not a valid debt, and she plans to contact the creditor to resolve it. Applicant has provided no documentary evidence to support her averment. The debt remains owing.

1.q. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$142. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.r. A delinquent debt is owed to a creditor for an account that was placed for collection in the amount of \$698. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.s. A delinquent debt is owed to a creditor for an account that was placed for collection in the amount of \$3,905. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.t. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$565. Applicant plans to pay the debt when she is able to do so. (Government Exhibits 2 and 4.) The debt remains owing.

1.u. Applicant failed to timely file Federal income tax returns for tax years 2017 through 2019. She owes a past-due balance in the approximate amount of \$3,138. Applicant filed these returns in December 2021, however, there is no evidence to show that she has paid her delinquent Federal taxes. (Government Exhibit 4.) Applicant's Federal taxes remain owing

1.v. Applicant failed to timely file state income tax return for tax years 2017 through 2019. She owes a past-due balance in the approximate amount of \$1,000. Applicant filed these returns in December 2021, however there is no evidence to show that she has paid her delinquent state taxes. (Government Exhibit 4.) Applicant's state taxes remain owing.

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. Three are potentially applicable in this case:

- (a) inability or unwillingness 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.

Applicant incurred significant delinquent debt totaling approximately \$159,596. She also failed to file her Federal and state income tax returns in a timely fashion, and owes past-due taxes to both tax authorities. 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;
- (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.

Applicant attributes her significant delinquent debt to her divorce in June 2016. It has been six years since her divorce, and she has done nothing to resolve this debt. She states that she plans to contact a debt consolidation agency, but there is nothing more in the record. Applicant failed to respond to the FORM. There is no evidence of any payment plans, monthly payments, receipts, or any meaningful attempt or effort on her part to otherwise resolve her debts. The debts remain owing.

In regard to her income tax returns, there is evidence in the record that she filed both her Federal and state income tax returns for tax years 2017 through 2019 in December 2021, just eight months ago. The lateness of these filings, however, show irresponsibility. It appears that only when she was faced with the threat of not obtaining her security clearance did she decide to file the returns in question. Applicant still owes back taxes to the Federal and state authorities. Overall, Applicant demonstrates a pattern of unreliability and untrustworthiness. None of the mitigating conditions apply. Accordingly, this guideline is found against the Applicant.

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 not mitigated the Financial Considerations 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:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.v.	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