



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



In the matter of:)
)
) ISCR Case No. 20-02094
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On February 17, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

On February 25, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 15, 2022, scheduling the hearing for July 12, 2022, by Microsoft Teams. The hearing was

held as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through F. There were no objections to any exhibits, and they were admitted into evidence. The record remained open until July 26, 2022, to permit Applicant to provide additional evidence. AE G through R were provided. Hearing Exhibit I is the Government's response indicating there were no objections to the exhibits. They were admitted into evidence and the record closed. DOHA received the hearing transcript on July 25, 2022.

Findings of Fact

Applicant denied the allegations in SOR ¶¶ 1.a through 1.d. She admitted the allegations in SOR ¶¶ 1.e through 1.q. Her admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. She is not married. She has a nine-year-old child. She does not receive child support. She graduated from high school in 2008. She began attending college full time in 2008. She worked part-time while attending college. She stopped attending in 2012, when she had her child. She went back to school in 2014 and stopped again in 2015. She needs two more semesters to earn her degree. Applicant began working for a federal contractor in June 2019, but stopped in February 2021. She explained that due to the pandemic and her security clearance review she was not able to work for this employer. Her annual salary at the time was approximately \$35,000. She has been working at temporary jobs. (Tr. 16-24, 58)

The SOR alleges that Applicant has five delinquent consumer debts (SOR ¶¶ 1.a-1.d and 1.n) totaling approximately \$2,331; delinquent student loans totaling approximately \$32,325 (SOR ¶¶ 1.e through 1.m); unfiled federal and state income tax returns from tax year 2019 (SOR ¶¶ 1.o-1.p) and a \$244 state tax debt (SOR ¶ 1.q).

Applicant provided documents to corroborate that the debt in SOR ¶ 1.a (\$426) was settled in September 2020; the debt in ¶ 1.b (\$142) was paid in January 2020; and the debt in SOR ¶ 1.c (\$564) was settled in August 2019. These debts are resolved. (Tr. 26; AE D, E, F)

Applicant testified that sometime before December 2021, she was working with a person who was helping her with her finances, but she lost faith in that person. So in December 2021, she began working with a credit specialist (CS) who gave her tips on budgeting and tackling her financial problems. The service was free for the first 60 days and then she paid CS \$99 a month until about two months ago. CS sent out letters to the credit bureaus to dispute some of her debts. Applicant stated she has not received responses regarding the disputed debts. (Tr. 30-32)

Applicant denied the medical debt in SOR ¶ 1.d (\$284). She stated she was unable to determine the creditor and had contacted a number on the credit report, but there was no response. She stated that CS is disputing that debt, but she has not received a

response. This debt is reflected as a collection account in her September 2019 credit bureau report (CBR) with an assignment date of September 2016 and a last activity date of September 2019. It is not reflected on her 2021 and 2022 CBRs. (Tr. 27-29; GE 2, 3, 4, 5)

Applicant is disputing the debt in SOR ¶ 1.n (\$915). She admitted this debt in her answer to the SOR, but testified that she never had an account with this cell phone provider, so she disputed it. In her background investigation, she told the investigator that she had not had an account with this creditor since 2017 and was unaware of the collection account. She intended to contact the creditor and verify the accuracy of the debt and pay it if it was accurate. Her two 2019, 2021, and 2022 CBRs reflect this debt as a charged-off account. She testified that CS is disputing this debt. Post-hearing, Applicant provided a copy of a credit report showing the account had been disputed and deleted. This debt is resolved. (Tr. 32-34; GE 2, 3, 4, 5; AE H)

Applicant testified that she funded her college education with student loans and worked part-time while attending college. In 2015, she stopped attending school and could not afford to pay her student loans. She did not contact the lender to advise them of her status. (Tr. 19-22)

In January 2019, Applicant was interviewed by the government investigator and was confronted with her delinquent student loans. After she stopped attending school in 2015, she did not make any payments on her student loans. She disagreed with the debts because she had not received any correspondence that they were in collection. She said she had three student loans and did not recall the name of the lender and had no knowledge the loans were from the Department of Education (DOE). She intended to obtain a copy of her credit report to determine who she needed to pay and then pay the loans if the information was correct. The debts are reflected as collection accounts in her 2019 CBR and the loans were obtained from 2009 through 2012. She testified that it was difficult to handle her student loans when she lost her job. (Tr. 35-40, 58-60; GE 3, 5)

Applicant testified that she participated in a student loan rehabilitation program, where she was to pay \$5 a month for a period of months. She stated she made the payments until the government placed the student loans in a deferred status. The record was held open to allow Applicant an opportunity to provide the supporting documents to show when she had applied for the rehabilitation program and that she was making the required monthly payments before the deferment. Post-hearing, she provided a copy of her request to the creditor from March 2021 to rehabilitate her student loans, copies of her monthly rehabilitation payments from March 2021 to August 2021, and a November 2021, confirmation letter from the creditor advising her she had successfully rehabilitated the loans. The loans are now deferred pursuant to the Government's moratorium on student loan payments. (Tr. 35-40; AE I, J, K, L, M, N, O, P)

SOR ¶¶ 1.o, 1.p, and 1.q alleged that Applicant failed to timely file her 2019 federal and state income tax returns and she owed past-due state income taxes (\$244) for tax year 2017. Applicant testified that she did not timely file her 2019 federal and state income

tax returns because she had recently moved at the time and decided to have a professional complete her tax returns. She did not receive a W-2 income statement from one of her employers, which caused a problem of unreported income. She stated that she filed her 2019 returns when she completed her 2020 returns. She received a refund for 2020 tax year. She provided unsigned copies of her 2019 federal and state tax returns indicating they were completed by a professional tax preparer. Her 2019 federal income tax return showed that she owed \$722 in federal income taxes and \$104 for state income tax. There was also an electronically completed voucher for the amount to be paid to the IRS that was included with the return. (GE 2; Tr. 40-56; AE A, B)

Applicant provided a letter from the Department of the Treasury from April 2021, that showed a portion of her refund was applied to a state tax obligation. Presumably, this refund was from her 2020 federal taxes and satisfied her 2017 state tax debt. Post-hearing, Applicant stated in her email that she verified with the IRS that her 2019 tax return was not filed. She contacted her tax preparer who told her that her 2019 tax returns were mailed. Applicant said she advised the tax preparer that the IRS tax transcripts for 2019, reflected the returns were not filed. The tax preparer told her that she would mail Applicant a copy of the 2019 tax returns to sign and mail. Applicant stated that she had reached out several times to the tax preparer, but was unable to connect with her. At the close of the record, she had not yet received the tax returns that were presumably in the mail. (Tr. 40-56)

At her hearing, Applicant provided a copy of her 2019 federal and state tax returns as exhibits. The tax preparer's name and identification number were on the copies. The copies were unsigned by Applicant. Also included with the tax exhibits were copies of electronically prepared payment vouchers with Applicant's name and address and the address of the IRS and state tax authority where they should be mailed. It is unknown why Applicant has not signed her copy of the tax documents and mailed them. Applicant provided a copy of a letter from the IRS indicating that on July 26, 2022, it had received a request for verification of non-filing for tax year 2019. The letter confirmed that there was no record that Applicant's 2019 federal tax return had been filed. The evidence does not support that her 2019 federal and state tax have been filed. (Tr. 40-56; GE 2; AE A, B, C, G, L, Q)

Applicant attributes her financial issues to being underemployed. She stopped attending college when she had her daughter. She moved in with her parents. She was working at a state office for about seven years and was only earning about \$8 an hour. She is working at a temporary job now and earning \$15 an hour. She has no extra money at the end of the month after paying her expenses. She does not have a budget. (Tr. 61-65)

Applicant's August 2021 and June 2022 CBRs reflect that she has a new delinquent debt for unpaid insurance for \$52 that was not alleged in the SOR. It was first reported delinquent in July 2021. There is a second delinquent debt reported in the June 2022 CRB that is reflected as a charged-off account for \$2,759 that was opened in June 2020, and the last payment made was June 2021. I will not consider this information for

disqualifying purposes, but may consider it when applying the mitigating conditions, in making a credibility determination, and in my whole person analysis. (GE 4, 5)

CS testified on Applicant's behalf. In her technical role, CS does not provide budgeting and financial management services, but did try to assist Applicant with some financial advice. CS disputed items on Applicant's credit report that did not belong to her or had an inaccurate amount reported. She advised Applicant how credit cards worked. (Tr. 70-78)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." 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. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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 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 relating to the guideline 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(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.

Applicant has debts and student loans that have been delinquent or in collection for years. She failed to file her 2019 federal and state tax returns and owed taxes to her state for tax year 2017. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 financial issues to being underemployed. She paid the debts in SOR ¶¶ 1.a, 1.b, and 1.c before receiving the SOR. AG ¶ 20(d) applies to these

debts. She attempted to resolve the debt in SOR ¶ 1.d, but was unable to determine the medical creditor. She disputed the debt in SOR ¶ 1.n because she did not believe it was valid, and it was deleted from her credit report. I find AG ¶ 20(e) applies to these two debts. Applicant did not begin to address her delinquent student loans until after receiving the SOR. She began a rehabilitation program in March 2021 and consistently made the \$5 monthly payments, and the loans are no longer in default. Payments on the loans are deferred under the Government's moratorium. I find that AG ¶ 20(b) only partially applies because she delayed years before addressing her student loans and did not take action until after receiving the SOR. However, I give her credit for rehabilitating the loans.

Applicant testified that she delayed filing her 2019 federal and state tax returns because she was missing a W-2 and wanted a professional to prepare her returns. She believed her tax preparer had filed her 2019 returns with her 2020 returns. It appears she received a refund from her 2020 federal tax returns, which was applied to her state tax debt. Applicant verified through the IRS that her 2019 federal taxes are not filed. She has corresponded with her tax preparer to resolve the matter, and she said she was waiting for a copy of the return so she could file it. Applicant has copies of her 2019 federal and state tax returns, which she provided as exhibits (AE A, B), and a copy of a voucher to pay \$722 for her federal taxes and \$104 for her state taxes. It is unknown why she has not signed them and mailed them. Applicant was put on notice when she received the SOR that her 2019 federal and state income tax returns were not filed. At this juncture they still are not filed. AG ¶ 20(g) does not apply. The state tax debt in SOR ¶ 1.q is resolved.

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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant attributes her financial problems to years of underemployment. She has made progress in resolving her delinquent debts, including a few before she received the SOR. She did not begin to address her student loans until after she received the SOR, but made the \$5 monthly payments and the loans are rehabilitated. Applicant testified that she has no money left over at the end of the month. She does not have a budget. Despite being put on notice with the SOR in February 2021 that her 2019 federal and state income tax returns were not filed, they remain unfiled. She provided copies of her completed 2019 tax returns, which reflected the amounts she owed for both federal (\$722) and state (\$104) taxes, but has not mailed them to the IRS or her state tax authority. She did not contact her tax preparer until after her hearing.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. *See, e.g.,* ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.,* ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant does not have a reliable financial track record, she continued to accumulate delinquent debts after the SOR and has failed to file her 2019 tax returns. At this juncture, it is too early to conclude that her financial issues are no longer a security concern. Applicant has not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.n:	For Applicant
Subparagraphs 1.o-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge