



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



In the matter of:)
)
) ISCR Case No. 21-00871
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: Ron Sykstus, Esq.

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On June 11, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct and Guideline F, financial considerations. The action was taken 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) effective on June 8, 2017.

In an undated answer to the SOR, Applicant 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 by Microsoft Teams for July 20, 2022. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 7. Applicant and two witnesses testified. Applicant Exhibits (AE) A through N were offered. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript on July 29, 2022.

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.e, 1.g, and 1.j. Her admissions have been incorporated into the findings of fact. She denied the SOR allegations in ¶¶ 1.f, 1.h, 1.i, 1.k and 2.a. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. She married in 1993 and divorced in 2016. She has four sons, ages 29, 27, 26 and 23. She is a college graduate who took time off to raise her children. In 2012, she went back to work full time when her third child started high school. She worked for the same employer until 2017, when she was laid off due to budget cuts. She was unemployed for about six months and then worked for about five months before leaving her job to care for her sick mother. She began her present employment with a federal contractor in November 2018. (Tr. 16-25; GE 1)

The debts in the SOR are corroborated by Applicant's admission, credit reports provided as Government Exhibits, and her testimony. (GE 1-7)

In about 2015 one of Applicant's sons was working for a franchise business that he thought had great potential. He was being mentored by the owner. Applicant and her son discussed the possibility of purchasing their own franchise. Her son thought it was a promising opportunity to purchase a franchise and open it in a neighboring city. Applicant testified that she did her due diligence by working with local businesses, attending training and participating in working groups and discussions with coaches offered by the franchise business. (Tr. 25-31)

In October 2015, Applicant decided to purchase the franchise and was the sole owner. It cost \$60,000. She was working full time (\$70,000 annual income in 2015; \$95,000 in 2022) and had received a lump-sum payment of \$90,000 from her divorce. From the Small Business Association (SBA), she obtained a loan (\$150,000) to start the business (SOR ¶ 1.a-\$133,749). She purchased two vehicles for the business (SOR ¶¶ 1.c and 1.d). She used credit cards to finance some of the business expenses. She said she was nervous and excited. Her two oldest sons were full-time employees of the business and her two younger sons, who were still in college and high school, occasionally worked for the business. (Tr. 31-33, 66-77)

The business opened in early 2016 and did very well initially. In 2018, the business started to fail due to various factors; for instance, she found it was difficult to get good employees, and she believed some employees were stealing from the business. In 2018, she and her sons were working just to pay the franchise fee. She was unable to repay her SBA loan and contacted them about her options. Applicant testified that when the

company went out of business in 2018, she spoke a few times with the SBA and with the collection agency handling the SBA loan. No arrangements to pay the debt were made. In June 2022, she spoke with the SBA about the defaulted loan and was advised to submit a form showing her assets and liabilities. She has not yet submitted the form. (Tr. 32-38, 66-77, 89-91)

Applicant testified that after the business failed, she was working with a lawyer and discussed filing bankruptcy. She said she was working with the attorney for at least a year. She changed attorneys and discussed filing bankruptcy with her current attorney over the course of approximately two years. At the time her business failed, she and her ex-husband were still joint owners of a house they were attempting to sell, but were having difficulty. Due to the equity in the house it was difficult to file bankruptcy. She estimated her Chapter 13 bankruptcy payments would be around \$3,500 a month, which she could not afford. She did not have any liquid assets. She said the house sold on July 7, 2022. She said that she was entitled to \$275,000 from the proceeds of the sale, but her ex-husband had done significant repairs in order to sell it, and she had to reimburse him for the costs. She did not know exactly the amount owed, but anticipated it could be \$40,000 to \$50,000. She anticipated receiving her share of the profit shortly. (Tr. 35-40)

The debt in SOR ¶ 1.b (\$18,732) was a credit card that was used in Applicant's business. She contacted the creditor in 2018. She did not follow up and contact them again until a week before her hearing, with a letter stating she believed there were some fraudulent charges made to the account. She requested an itemized bill. The debt is not resolved. (Tr. 40-43, 77-78; AE F)

The debts in SOR ¶¶ 1.c and 1.d (\$9,474 and \$9,025, respectively) are two accounts from the same creditor for vehicles Applicant purchased and were used in her business and later repossessed. A week before her hearing, she sent a letter to the creditor indicating she wanted to discuss making an arrangement for payment. The debt in SOR ¶ 1.j (\$250) is also with the same creditor. Applicant testified that this account was bundled with the other two accounts, but did not offer any documents to substantiate the information. None of these debts are resolved. (Tr. 43-46, 53-54, 78; AE G)

The debt in SOR ¶ 1.e (\$6,328) is a credit card debt that Applicant has been making \$150 payments on since November 2020. If she continues to make her payments the debt will be resolved in June 2024. The debt is being resolved. (Tr. 48-49, 78; AE H)

Applicant testified and documented that she paid the debts in SOR ¶¶ 1.f (\$4,605) and 1.g (\$2,869) through payments she started in 2019. These debts are resolved. (Tr. 49-51; AE I, J)

Applicant settled the debt in SOR ¶ 1.h (\$2,668) for \$1,867 in June 25, 2021. This debt is resolved. The debt in SOR ¶ 1.i (\$1,789) was settled in December 2020 for \$679. This debt is resolved. (Tr. 51-53; AE K, M)

The creditor for the charged-off debt in SOR ¶ 1.k (\$4,511) had a judgment entered in December 2020 against Applicant. She stated that she made payments, but could not sell her house until she paid the balance owed on this debt. She paid the debt on June 27, 2022. The debt is resolved. (Tr. 54-57; AE N)

Applicant testified that she hopes to resolve her remaining delinquent debts with the money she receives after the proceeds from the sale of the house she owned with her ex-husband when the money becomes available. She said she has a budget and lives within her means. She has about \$10,000 in savings and \$150,000 in a retirement account. (Tr. 57, 79-83)

Applicant completed a security clearance application (SCA) in February 2020. In response to questions about whether Applicant had any delinquencies involving enforcement, she stated "Yes" and listed "SBA" as the agency to which she owed a debt. She indicated she was currently delinquent on a loan. She provided the loan number and the amount she owed (\$133,000). She wrote "I bought a franchise and took out a loan with SBA. The business failed. I am currently working with my attorney discussing bankruptcy." (GE 1) She further stated: "Currently working with my attorney regarding options." She also said: "Court not involved." (Tr. 57; GE 1)

Section 26 also asks about delinquencies involving routine accounts. It specifically asks if the applicant in the last seven years had any property repossessed, either voluntarily or involuntarily; defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or canceled for failing to pay as agreed; if the applicant had been over 120 days delinquent on any debt not previously entered, or if applicant was currently over 120 days delinquent on any debt. She answered "No." (GE 1)

Applicant testified that she did not intentionally lie or attempt to deceive the Government. She said she disclosed the SBA delinquent loan and did not know why she did not disclose any of her other debts. She said she thought the question was beyond seven years and not within seven years, but then said she could not swear to that being the reason. She said she thought the debts were not over 120 days delinquent or she was not contacted by collection agencies. She said her debts had not been turned over to collection agencies at the time she completed her SCA and there were not court actions against her. She was aware that two vehicles she purchased had been repossessed and that she was unable to pay the numerous bills associated with the business. I did not find Applicant's explanations credible. I find that although she disclosed her defaulted SBA loan, she intentionally failed to disclose her numerous other delinquent debts. (Tr. 57-66, 85-86)

Applicant provided copies of her 2019 through 2021 employee performance appraisals reflecting her outstanding or above average performance. A character witness, who has known her since 2014 and considers her a close friend, testified on her behalf. He was aware that Applicant was purchasing a franchise and thought it was a high-risk business. He considers himself fiscally conservative. He has never questioned

Applicant's integrity and believes she is an upstanding dedicated mother and family member, and he does not have any concerns about her holding a security clearance. He held one for 40 years. (Tr. 101-107)

Applicant's boyfriend testified on her behalf. They have been together for about five years, and he has known her for about seven years. He testified that she is a hard worker and was stressed out about the business she purchased. He was aware of her debts and believes she has every intention of paying them. He believes she is honest and would not be in a relationship with her if she was not. He believes her failure to disclose her debts was an accident and sometimes the questions on the SCA are difficult to follow. (Tr. 93-101)

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 E: Personal Conduct

AG ¶ 15 expresses the security concerns for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant started a business in 2016. She obtained an SBA loan and used credit cards to fund the business' expenses and had loans for two vehicles. The business failed in 2018 and she defaulted on the SBA loan and numerous other accounts. Applicant disclosed the defaulted SBA loan on her February 2020 SCA, but failed to disclose any of the other delinquent debts. She said she did not know why she did not disclose any of her other debts. She said she thought the question was beyond seven years and not within seven years, but could not be certain. She said she thought the debts were not over 120 days delinquent or she was not contacted by collection agencies. Her explanations for why she did not disclose them are not credible. She was obviously aware that she had closed her business in 2018 and could not pay the numerous bills associated with it. She was aware that the two vehicles were repossessed. I find Applicant

deliberately failed to disclose her delinquent debts, except for the SBA loan. The above disqualifying condition applies.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and truthfully; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not make a prompt, good-faith effort to correct her omissions. She was aware she had numerous delinquent debts and two repossessed vehicles in addition to her defaulted SBA loan. Failure to disclose information on an SCA is not a minor offense. Her conduct casts doubt on her reliability, trustworthiness, and good judgment. None of the mitigating conditions apply.

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.

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

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

In 2018, Applicant defaulted on her SBA loan and accumulated numerous delinquent debts. 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; and
- (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.

Applicant's financial problems were the result of her starting a business in 2016 that then failed in 2018. This was a circumstance beyond her control. Although Applicant sought guidance from an attorney and contemplated filing bankruptcy, she has not yet addressed the resolution of the SBA loan (SOR ¶ 1.a-\$133,000). Applicant testified that when the company went out of business in 2018, she initially spoke a few times with the collection agency handling the SBA loan and was discussing bankruptcy, but she did not take any action to resolve it. In June 2022, she spoke with the SBA and was advised to submit a form showing her assets and liabilities. She has not yet completed the form and

provided minimal evidence of any additional efforts to resolve this debt. Applicant's lengthy delay in following through on resolving this debt and others does not constitute acting reasonably under the circumstances. I find AG ¶ 20(b) has some application.

Applicant has resolved or is resolving the delinquent debts in SOR ¶¶ 1.e through 1.i, and 1.k. AG ¶ 20(d) applies to these debts. In addition to the SBA debt in SOR ¶ 1.a, she has not resolved the debts in SOR ¶¶ 1.b (\$18,732), 1.c (\$9,474), 1.d (\$9,025), and 1.j (\$250). A week before her hearing she sent these creditors letters requesting an itemized bill from one and a request for a payment arrangement to another. These debts are not resolved.

There is some evidence that she recently sought assistance from her attorney to resolve the remaining debts, but her delay in addressing these debts until shortly before her hearing is a concern. At this juncture, I cannot find that there are clear indications that her financial issues are under control. AG ¶ 20(c) has minimal application. Although she believes there were fraudulent charges on one of her credit cards, even if she raised the concerns initially with the creditor, she has not done anything else for years. There is insufficient evidence to apply AG ¶ 20(e).

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 E and Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant was aware she had numerous delinquent debts when she completed her SCA and failed to disclose her complete financial picture. Following rules and regulations

while holding a security clearance is critical. The government must be confident that those holding security clearances comply with rules and regulations, even when they are inconvenient, tedious, or when no one is watching. Being able to rely on those with security clearances to use good judgment and be honest is the cornerstone of the process. To her credit, she has paid some of her creditors, but still has approximately \$170,000 of delinquent debt that is not resolved. Applicant has not met her burden of persuasion. At this juncture, she has an unreliable financial track record. 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 E, personal conduct, and 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.d:	Against Applicant
Subparagraphs 1.e-1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge