



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



In the matter of:)
)
) ISCR Case No. 21-02475
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

September 16, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On March 26, 2021, Applicant submitted a Questionnaire for National Security Positions (SF-86). On November 20, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the DCSA CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On December 1, 2021, Applicant answered the SOR (Answer) and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 21, 2022, was provided to her by letter dated January 27, 2022. On February 10, 2022, Applicant received the FORM. Department Counsel attached as evidence to the FORM Items 1 through 7. Applicant

was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She did not submit any information within the 30-day period after receipt of the FORM. I received Items 1 through 7 into evidence. On April 12, 2022, the case was assigned to me.

Findings of Fact

Background Information

Applicant is a 38-year-old senior technical service salesperson employed by a defense contractor since April 2018. She is a first-time applicant for a security clearance and seeks a clearance to enhance her position within her company.

Applicant attended college part-time online from October 2002 to October 2013, but did not earn a degree. She married in August 2014. Applicant has a 17-year-old stepson, a 14-year-old stepdaughter, and a 4-year-old daughter.

Financial Considerations

Applicant's 11 delinquent SOR debts totaling \$82,156 are established by her March 26, 2021 SF-86; her Office of Personnel Management (OPM) background investigation conducted from May 26, 2021 to June 14, 2021, containing her June 1, 2021 OPM Personal Subject Interview (PSI); her May 21, 2021 and November 4, 2021 credit reports; and her December 1, 2021 SOR Answer. (Items 3 – 7)

Applicant explained that some of her admitted personal loan and credit card debt was incurred to pay court costs and legal fees associated with her husband's custody dispute with his ex-wife, which began in 2015. (Items 3, 5) She acquired additional debt and her accounts became delinquent when she was laid off from her former job in April 2016 and remained unemployed for about ten months. (Item 3, 4, 5) Additionally, Applicant's husband was unemployed from November 2020 to April 2021, and he was laid off again in about June 2021 during the COVID-19 pandemic. (Item 5) Finally, Applicant explained that she incurred some additional debt resulting from paying her husband's out-of-pocket healthcare costs, which total over \$10,000 annually and without which he would be permanently disabled and unable to work. (Item 3)

The following is a summary of Applicant's 11 SOR debts and their current status.

SOR ¶ 1.a – Past-due personal loan account in the amount of \$3,374. Applicant admitted this allegation. She took this loan out in 2015 to pay her husband's attorney fees in a post-divorce dispute with his ex-wife. She made her last payment on this account in 2016. She added that she has been working with a credit-repair company to negotiate a lesser amount. Applicant did not submit any documentation supporting her negotiation efforts. (Items 3, 6) DEBT NOT RESOLVED.

SOR ¶ 1.b – Collection medical account in the amount of \$4,995. Applicant admitted his allegation. This debt is for her husband's uncovered medical costs in 2016.

This account has been delinquent since 2016. (Items 3, 6) Applicant did not submit any documentation identifying her resolution efforts, if any, to address this account. DEBT NOT RESOLVED.

SOR ¶ 1.c – Collection personal loan account in the amount of \$27,490. Applicant admitted this allegation. She took this loan out in 2016 to pay husband’s attorney fees in a post-divorce dispute with his ex-wife. She made her last payment in 2016. (Items 3, 6) Applicant did not submit any documentation identifying her resolution efforts, if any, to address this account. DEBT NOT RESOLVED.

SOR ¶ 1.d – Collection student loan account in the amount of \$3,871. Applicant denied this allegation. She stated that she was charged for a semester that she did not attend and had “many conversations with the school about the charge for classes.” The college she attended notified her in 2017 that she owed a balance for three classes that she dropped after registration. She contends that, because she dropped the classes, she does not owe the college for the credits, and as of her June 1, 2021 OPM PSI, she had not taken any action to resolve the debt. (Items 3,6) DEBT NOT RESOLVED.

SOR ¶ 1.e – Collection credit card account in the amount \$3,860. Applicant denied this allegation. She stated that this account, “is wrongfully indebted to me,” and that she is working with a credit-repair company to have this account removed from her credit report. Her credit report indicates that this account was opened in 2015 and her last payment was made in 2106. (Items 3, 6) Applicant provided no explanation for her change in position regarding liability. DEBT NOT RESOLVED.

SOR ¶ 1.f - Collection personal loan account in the amount of \$24,508. Applicant denied this allegation. She opened this account in about 2014 and used it to pay for her wedding and her husband’s custody dispute. She was unable to remain current on her payments after her 2016 layoff, but after securing a new job in 2017 and stabilizing her finances, Applicant contacted the lender and arranged a settlement for \$5,000. She stated that she, “paid this entire balance in full, but disagreement on the remaining interest has projected the entire balance.” She added that she is working with a credit-repair company to have this account removed from her credit report. (Items 3, 6) Applicant did not submit any documentation identifying her resolution efforts to address this account. DEBT NOT RESOLVED.

SOR ¶ 1.g – Collection medical account in the amount of \$8,251. Applicant admitted this allegation. She incurred this debt in 2018. She stated that she was negotiating the balance to a lesser amount of \$700 that would be, “paid in full before January 31st, 2022.” (Items 3,6) It is unclear from the FORM when or if she made her last payment. Applicant did not submit any documentation supporting her negotiation efforts. DEBT NOT RESOLVED.

SOR ¶ 1.h – Collection personal loan account in the amount of \$4,883. Applicant denied this allegation. She incurred this debt in 2020. She stated that she, “will be working with credit repair to remove.” It is unclear from the FORM what this debt was for

or when or if she made her last payment. (Items 2, 3, 6, 7) Applicant provided no documentation to support her denial of liability. DEBT NOT RESOLVED.

SOR ¶ 1.i – Collection medical account in the amount of \$660. Applicant admitted this allegation. She incurred this debt in 2015 to pay for her husband’s uncovered medical treatment. She stated that she, “is working on getting this paid in full with a reduction in balance while working with the credit repair company.” It is unclear from the FORM when she made her last payment. (Items 2, 3, 6, 7) Applicant did not submit any documentation supporting her negotiation efforts. DEBT NOT RESOLVED.

SOR ¶ 1.j – Collection medical account in the amount of \$179. Applicant admitted this allegation. She incurred this debt in 2018 to pay for her husband’s uncovered medical treatment. She stated, “I have since paid this debt in full with the collection agency.” However, Applicant did not submit any documentation corroborating her claim of payment. (Items 3, 6) DEBT NOT RESOLVED.

SOR ¶ 1.k – Collection medical account in the amount of \$85. Applicant admitted this allegation. She incurred this debt in 2016. It is unclear from the FORM what this debt was for or when or if she made her last payment. She stated that she “will be working with the credit repair to reduce this medical charge to pay off.” (Items 3, 6, 7) Applicant did not submit any documentation supporting her negotiation efforts. DEBT NOT RESOLVED.

The only documentation that Applicant submitted was that accompanying her SOR Answer: (1) her marriage certificate to her husband; (2) a family court Register of Actions describing litigation events between her husband and his ex-wife; and (3) a credit-repair company email dated September 27, 2021 with access details to login to her credit-repair company. (Item 3) However, as Department Counsel explained in her FORM, Applicant’s documentation leaves it unclear what services are being provided by the credit-repair company and what accounts are included in services to be provided. Applicant did not submit any information after receiving her FORM that would have addressed any of these shortcomings.

Applicant stated that she is an outstanding citizen and had no debt before 2015. She recapped her extenuating circumstances and the life events that led to her financial difficulties. She further stated that she will not be able to complete her job tasks unless she has a secret clearance. She added that she is a law-abiding citizen and would not under any circumstances betray her country as a result of her debt. She works very hard and supports a disabled husband and three children. Additionally, she receives health insurance through her job that is necessary to ensure that she and her family members receive proper medical care. (Item 3)

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 clearance favorable 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial considerations:

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.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Id. (internal citation omitted).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

AG ¶ 20 lists seven potential mitigating conditions:

(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;

(f) the affluence resulted from a legal source of income; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

In summary, no mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of her adult life, and she is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting her long-standing financial problems are being addressed, doubts remain about her suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

While some of the debts alleged in the SOR arguably resulted from circumstances beyond Applicant's control due to medical expenses, unemployment, and her husband's custody dispute, that is only half of the analysis and Applicant's response to her financial problems must be the second consideration.

Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her outstanding delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a better track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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.k: | Against Applicant |

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge