



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



In the matter of:)
)
) ISCR Case No. 20-01690
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: *Pro se*

10/13/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant owes several hundred thousand dollars in delinquent federal student loans and other unresolved consumer debts. While her financial issues worsened due to family circumstances beyond her control, she does not have a reasonable plan to resolve her debts, and has not made progress towards resolving them. She did not provide sufficient evidence to mitigate security concerns arising from her delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 4, 2019. On January 11, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued her a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (Exec. Ord.) 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), implemented by the DOD on June 8, 2017.

Applicant answered the SOR on March 9, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Processing of this case was delayed significantly by the COVID-19 pandemic. The case was first assigned to another DOHA administrative judge on March 16, 2022. On April 20, 2022, DOHA issued a notice scheduling the hearing to be held in person on May 16, 2022, at a location near where Applicant lives and works. The case was assigned to me on May 10, 2022, after the initial administrative judge became unavailable to hear the case.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6. GE 1 through 5 were admitted without objection. GE 6 was also admitted without objection, though page 8 of the document was excluded. (Tr. 27-28) Applicant testified and submitted Applicant Exhibits (AE) A through H, which were admitted without objection. I held the record open until May 31, 2022, to enable Applicant the opportunity to submit additional documents. She submitted documents that were marked as AE I through N and admitted without objection. She subsequently submitted additional status updates by e-mail on June 6, 2022 and June 29, 2022. Those e-mails are marked as AE O and AE P, respectively, and included in the record. The record closed on June 29, 2022. DOHA received the transcript (Tr.) on May 24, 2022.

Jurisdiction

Applicant is employed by a U.S. government contractor. The cabinet department that oversees the federal agency where she works has an agreement with DOD establishing DOHA jurisdiction over the case. See Directive 5220.6 at ¶ 2.2. Applicant also works on a DOD facility. (Tr. 48-49)

Findings of Fact

Applicant admitted SOR ¶¶ 1.a – 1.o and 1.q. She denied SOR ¶ 1.p. She provided narrative statements with her answers. Her admissions and statements are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence submitted, I make the following findings of fact.

Applicant is 66 years old. She has a high school diploma and some other schooling. She was married for 32 years, from 1986 until her husband died in July 2018. She has two adult daughters. She worked as a cleared employee of another federal government agency (AGA) for forty years, from 1976 until August 2016, when she retired as GS-8, step 10, with a salary of about \$62,000. (Tr. 12-13, 45-47) She lived in State 1 from 1987 to 2016, until moving to State 2 shortly after she retired. She was unemployed until February 2017, when she began working for a federal contractor, her current sponsor for a clearance. She works on a DOD facility, but is contracted to the same federal agency from which she retired in 2016. (GE 1; Tr. 45-50, 89)

The SOR alleges over \$230,000 in past-due federal student loans, bank or credit card debts of about \$4,300, and some past-due state tax debt. Applicant disclosed her financial issues on her SCA and she discussed her debts during her May 2019

background interview. (GE 1, GE 2) Applicant's debts are detailed on the credit reports in the record, from May 2019, March 2020, and March 2022. (GE 2, GE 3, GE 4).

Applicant testified that in the mid-1990s, her husband began acting erratically, exhibiting symptoms of what was later diagnosed as bipolar disorder or manic depression. He stopped working and began making large family decisions unilaterally, such as moving the family into his mother's house. He assumed the mortgage for that home after his mother died, in about 1999-2000, but did not pay the mortgage. He also quit his job without Applicant's knowledge. Their young daughters also had a traumatic experience at school, and Applicant's sister was diagnosed with a chronic disease requiring continuing care. (Tr. 37-40, 53-58, 92; Answer)

Applicant's husband's troubles continued and he began taking out loans without her knowledge. His paycheck was garnished to address those loans. Applicant took out student loans to pay for her daughters' education, expecting that her husband's income would help pay them back. (Tr. 40; Answer)

Applicant, her husband, and her younger daughter moved to State 2 after she retired from federal service in 2016 because of the high cost of living in State 1. They moved into a home owned by Applicant's brother and his wife. Applicant took the job as a federal contractor on a U.S. government facility to support her husband and his medical expenses. His health deteriorated and he died in 2018. At the same time, she was contacted by student loan creditors asking for increased payments she could not afford. (Tr. 40-42, 89-90; Answer)

Applicant was doing her best to pay her bills. She also had to purchase a new car when her car died, and the new car was totaled in an accident in State 1 while she was there for her daughter's wedding. She used her federal retirement payments to pay for the car. Student loan payments have been on hold due to the COVID-19 moratorium. (Tr. 41-42)

Applicant and her husband filed a Chapter 13 bankruptcy petition in 2009. The bankruptcy was discharged in September 2014. (SOR ¶ 1.a) Applicant paid about \$60,000 into the bankruptcy plan, about \$1,500 per month. She kept her federal employer's security office appropriately informed during the process. (GE 5; Tr. 50-52, 58-62, 103-105; Answer)

SOR ¶¶ 1.c (\$54,010); 1.d (\$53,061); 1.e (\$51,333); 1.f (\$27,326); 1.g (\$23,531); 1.h (\$19,875); 1.i (\$18,038); and 1.j (\$11,005) are all federal student loans that Applicant took out for her daughter's college education. (GE 3) The credit reports in the record show that she took out the loans between 2011 and 2014 while her bankruptcy case was pending. (GE 2 – GE 5) They are all still listed as past due on an April 2022 credit report. (GE 4) Interest of \$17,335 on her student loans accrued in 2019. (AE N) Applicant said the last time she made any payments was in early 2020. She said the government stopped accepting payments under the COVID-19 moratorium. She said she was paying on the loans before then, as money was taken out of her pay and her government annuity. All told, about \$1,300 to \$1,400 per month was going towards student loan payments before the moratorium. (Tr. 63-69) When payments were put on

hold, Applicant used that money to pay expenses related to her daughter's wedding. Her younger daughter is still in school. Applicant realized she could not afford the loans, but said she felt like a failure if she did not help her daughters. (Tr. 63-72, 95-102; Answer)

After the hearing, Applicant provided paystubs from her employer from 2019 and 2020, showing garnishments of her pay of between \$205 and \$256 per paycheck towards her student loans, until June 2020, when none is shown. (AE J, AE K, AE O, AE P)

SOR ¶ 1.b is a \$2,000 delinquent state tax debt from tax year 2015, owed to State 1. The debt owed is now approximately \$4,800 due to interest. Applicant paid \$2,000 in early 2022, and is on a \$254 per month payment plan for the next 12 months. (Tr. 72-76; AE E, AE H) This debt is being resolved.

SOR ¶¶ 1.k (\$968), 1.m (\$764), and 1.q (\$400) are consumer debts to a bank. Applicant provided some documentation from early 2021 about two of these debts (AE B and AE C) and indicated in her answer that she would resolve them. She had not made any payments towards these accounts by the hearing date. (Tr. 78) They remain listed as past due on an April 2022 credit report. (GE 4 at 7)

SOR ¶ 1.l (\$801) is a consumer debt to another bank. Applicant paid the debt off in February 2021. (Answer; AE A) An April 2022 credit report shows that the account was charged off but now has a zero balance. (GE 4 at 12) This debt is resolved.

SOR ¶ 1.n (\$545) is a consumer debt to a bank. SOR ¶ 1.o (\$439) is a credit account with a department store. SOR ¶ 1.p (\$406) is a credit account with a bank. All three debts are still listed as past-due as of April 2022. (GE 5 at 18)

Applicant participated in credit counseling many years ago and also during the bankruptcy. (Tr. 87-88) She testified that she has every intention of paying on her debts. She said it is not easy to get correct contact information for many of her consumer creditors and collection agencies. (Tr. 80-83; AE I, AE O, AE P) Her first financial priority after her husband died was to pay funeral costs and to pay back loans from family members. (Tr. 80-83) She plans to keep working for another five years and paying her debts, and then retire back to State 1 to be near her daughter. (Tr. 107-108)

Applicant earns \$28 an hour in her job. (Tr. 94) She reported a monthly net annuity of \$3,205 in federal retirement. She receives about \$3,030 in net monthly income from her job. On a personal financial statement prepared for the hearing, she reported multiple credit card accounts she was paying down, most with balances of less than \$1,000. She also has a car payment of \$338. No payments towards her SOR debts are indicated. (AE D, AE F)

Applicant's brother and sister-in-law wrote letters of reference. They noted the many family hardships Applicant has endured. They regard Applicant as honest, trustworthy, and patriotic. She is also kind, loyal, caring, and dependable, and she has a moral character. (AE L, AE M)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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 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 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

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out, in pertinent part, 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. . . .

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

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) . . . failure to pay annual Federal, state, or local income tax as required.

Applicant has a long history of financial problems. She and her late husband filed Chapter 13 bankruptcy in 2009, and her debts continued after the bankruptcy was discharged in 2014. She incurred several hundred thousand dollars in federal student loan debts financing her daughters' college education, as well as multiple consumer credit debts, all far beyond her ability to pay them. Her financial situation was worsened by tragic life circumstances. Her husband's bipolar depression and other medical issues impacted his judgment, employability and financial stability, and she moved to a new, more affordable state after she retired from federal service. AG ¶¶ 19(a), 19(c), and 19(g) apply.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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, or 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, 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
- (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 has a long history of financial instability. She and her husband filed bankruptcy in 2009, and their 2014 bankruptcy discharge did little to change their financial trajectory. She has numerous unresolved delinquent federal student loans, totaling over \$230,000, as well as several unresolved consumer debts. Her debts are

ongoing, likely to remain so for quite some time, and continue to cast doubt on her judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

For many years, Applicant's finances were impacted by her late husband's condition. He had bipolar depression, which impacted his judgment, financial stability and decision-making, as well as his employment, all of which was a long-term series of tragic circumstances beyond her control. The first prong of AG ¶ 20(b) unquestionably applies. Full application, however, requires reasonable action under the circumstances. Applicant took some steps to improve the family finances, most notably by moving to State 2, moving into a home owned by her family members, and taking a new job after 40 years of federal employment. However, while the bankruptcy case was pending, she also took out several hundred thousand dollars in federal student loans to fund her daughters' college education. While this was well-intended, she acknowledged that she knew she could not afford the loans, fell behind in repayments, and has not established any responsible repayment plan. For a time before the pandemic, her wages and annuity payments were being garnished for the loan repayments, but this is currently on hold due to the federal government's repayment moratorium, begun at the start of the pandemic, in early 2020. Applicant has also made little showing of efforts to repay her consumer debts. What is needed to establish reasonable effort and good-faith is a track record of steady payments towards her debts, or at least a responsible plan, and active steps taken towards putting that plan into place. That is not shown here. AG ¶¶ 20(b) and 20(d) do not fully apply.

Applicant participated in credit counseling many years ago and again during the bankruptcy, but her debts are not being resolved and are not under control. AG ¶ 20(c) does not apply.

Applicant's State 1 tax debt concerns a single tax year, 2015, during the time when her life in State 1 was being uprooted by her husband's medical condition and related circumstances. She paid \$2,000 towards the debt and has a reasonable plan in place to resolve the rest. AG ¶ 20(g) applies.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. In particular, I considered Applicant's long career as a cleared employee with a federal agency as weighing in her favor. But that background is not enough to overcome the overwhelming evidence of long-term, ongoing financial issues that continue to cast doubt on Applicant's judgment and overall eligibility for access to classified information. Applicant did not provide sufficient evidence to mitigate security concerns arising from her delinquent debts.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c - 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m - 1.q:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge