



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



In the matter of:)	
)	
)	ISCR Case No. 20-01745
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

10/28/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has two prior bankruptcies, in 2000 and 2014. She asserted, without support, that the debts in the SOR were largely not her responsibility, either because they were resolved through the second bankruptcy, or were fraudulent accounts created by someone else. She did not provide sufficient evidence to rebut, dispute, or mitigate the debts in the SOR, all of which related to accounts created after the 2014 bankruptcy. Despite strong whole-person evidence, including many years of service in the Army and her status as a disabled veteran, 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 October 16, 2019. On October 30, 2020, 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 CAF issued the SOR 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.

In an undated answer to the SOR, Applicant answered the allegations with brief explanations and requested a hearing. The case was assigned to me on April 5, 2022. On April 25, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 12, 2022.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 9, which I admitted without objection. Applicant's counsel offered Applicant's Exhibits (AE) A through H, which I also admitted without objection. Applicant also testified. I held the record open until May 23, 2022, to give Applicant the opportunity to submit additional documents. Through counsel, she timely submitted documents that were marked as AE I through P, all of which I admitted without objection. The record closed on May 23, 2022. DOHA received the hearing transcript (Tr.) on June 1, 2022.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a, 1.b, 1.d - 1.f, and 1.i – 1.m. She denied SOR ¶¶ 1.c, 1.g, 1.h, and 1.n. For each allegation, she provided a brief explanation. Her admissions and explanations 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 53 years old. She grew up in a family of 10 children. She graduated from high school in 1986 and worked her way through college. She earned a bachelor's degree in 1999, an associate's degree in 2014, and a master's degree in 2017. She was married from 1993-2006 and again from 2008-2010. Both marriages ended in divorce. She has three sons, ages 28, 21, and 8. Her youngest son lives with her. (GE 1; AE B, AE C, AE D, AE E, AE F)

Applicant served in the U.S. Army from 1992 to May 2015. She spent her first 10 years as an enlisted soldier, and was commissioned as an officer in 2002. She retired as a Major (O-4). While serving in Iraq, Applicant was badly wounded and she was evacuated to Germany for treatment. Her combat-related injuries led to her placement on temporary disability in May 2013, and ultimately to her full retirement from the Army two years later as an 80% disabled veteran. She received two Meritorious Service Medals, six Army Commendation Medals, three Army Achievement Medals, and numerous other service awards, medals, and commendations for her service to the country in uniform. (AE A, AE F; Tr. 25-29)

After retiring from the Army, Applicant worked for a defense contractor in another state from July 2017 to June 2019, earning a \$105,000 annual salary. She then changed jobs in the same company, with a salary of \$118,000 annually. Applicant worked for a different large defense contractor from September 2019 until July 2021. She has worked for her current employer and clearance sponsor in the defense

industry, in a similar job, since then. She has an annual salary of \$125,000. As an 80% disabled veteran, she receives \$3,600 per month in retirement and disability pay combined. She has held a clearance since 1992, largely without interruption. (GE 1; Tr. 20-27, 44-57; AE L, AE M, AE N, AE P)

The 14 SOR allegations concern two prior Chapter 7 bankruptcies (2000 and 2014) and 12 delinquencies, totaling about \$20,000. The debts are established by credit reports from February 2017, November 2019, and May 2022. (GE 6, GE 7, GE 8)

Applicant filed for Chapter 7 bankruptcy protection in 2000 with her first husband. He was also on active duty, stationed overseas. They had money problems and the bankruptcy resulted. (Tr. 57-58) (SOR ¶ 1.a)

Applicant filed for Chapter 7 bankruptcy again in 2014. Both bankruptcies were discharged. (SOR ¶¶ 1.a, 1.b) (GE 2 – GE 5; AE G, AE H)

Applicant's 2014 bankruptcy resulted after her pay was reduced while she was on temporary disability. This led to a decline in income, and she fell behind on her bills. (Tr. 50-51, 59-61) She also did not receive child support from her first husband, the father of her two older children, after 2014. (Tr. 48-49)

In addition, Applicant's income declined after she was determined to be permanently disabled and then medically retired from the Army. She also had many bills and two houses, in two different states where she had served in the Army, and once the rental homes lost their renters, she could not afford the mortgages. (Tr. 37-39) She testified that she returned the rental homes to the bank through deeds in lieu of foreclosure in about 2014. (Tr. 102-103; GE 1 at 41-42)

On her 2019 SCA, Applicant disclosed her 2014 bankruptcy and her two home foreclosures, and noted that her financial issues were due to post-Army unemployment and the loss of rental income. (GE 1)

Applicant admitted some SOR debts and denied others, but largely claimed that many of the SOR debts were listed in the 2014 bankruptcy and that the debts were not hers. Applicant believes that the creditors for debts in her second bankruptcy then sold the accounts to other creditors, who are the creditors listed in the SOR. She did not believe that she applied for new credit cards or credit accounts after the second bankruptcy – accounts which later became delinquent. She asserted that some of the delinquent accounts noted in the SOR and on her credit reports might belong to a twin brother, who has a similar social security number and that one of her siblings might have taken out an account fraudulently, but she provided no documents to support these claims. She asserted that none of the accounts alleged in the SOR (SOR ¶¶ 1.c-1.n) are her accounts. She has made no payments towards any of those debts, because she believes they are not hers. (Tr. 62-73, 78, 103-105; GE 9)

Referring to her debts in general, Applicant said, "in my heart of hearts, I know and believe that's not my debt. If I thought that was my debt, I would have paid that debt, but that's not my debt. I really do believe that." (Tr. 106, 108) She acknowledged

that she has made mistakes but she is proud of her accomplishments, and of her service to the country. (Tr. 106-108)

The debts alleged in the SOR all post-date Applicant's second bankruptcy, as the subsequent credit reports list dates of origin that came after the discharge for all of the accounts. None of the SOR debts are listed on her February 2017 credit report. (GE 6) All of the SOR debts are listed on her November 2019 credit report, and most remain listed as delinquent as of May 2022. (GE 7, GE 8; Tr. 62-66)

SOR ¶ 1.c (\$598) is a debt placed for collection. Applicant did not recognize the debt and said she contacted the creditor. (Tr. 30, 72; GE 7)

SOR ¶ 1.d (\$1,065) is an account placed for collection by a bank. Applicant asserted that this account was resolved in the 2014 bankruptcy but was then sold to another creditor. (Tr. 30-31, 72-76; GE 7, GE 8)

SOR ¶ 1.e (\$530) is an account that was charged off. Applicant believes it was listed in the second bankruptcy petition. She said she has a valid account with the same bank now. She believes the SOR account is fraudulent. (Tr. 31 78-82; GE 7, GE 8)

SOR ¶ 1.f (\$2,023) is a bank debt placed for collection. Applicant believes it is part of her bankruptcy and has done nothing else to resolve it. She said it was not her debt. (Tr. 31, 82-83; GE 7, GE 8)

SOR ¶ 1.g (\$141) is a past-due medical debt with an unidentified creditor. (GE 7) Applicant denies the debt. She has TRICARE as an Army retiree for herself and her two younger sons. She also has VA medical benefits. (Tr. 31-32, 84)

SOR ¶ 1.h (\$4,595) is a debt that has been placed for collection. Applicant denies the debt, and claims it was part of her bankruptcy. She said it was not her debt. (Tr. 32, 84-85; GE 7; GE 8)

SOR ¶ 1.i (\$3,098) is a debt that has been placed for collection. Applicant admitted the debt in her answer and claimed it was part of her bankruptcy. She then asserted it was not her debt, and she believed it had been sold to another creditor. (Tr. 32, 84-85; GE 7)

SOR ¶ 1.j (\$3,200) is a debt placed for collection by a bank. Applicant admitted the debt in her answer and claimed it was part of her bankruptcy. She then asserted it was not her debt, and she believed it was part of her bankruptcy and had been sold to another creditor. (Tr. 32-33, 86-87; GE 7, GE 8)

SOR ¶ 1.k (\$1,077) is a debt placed for collection by a bank. She asserted that the debt was resolved in bankruptcy and was sold to another creditor. She believes it may be the same debt as SOR ¶ 1.d (Tr. 33-34. 87-88; GE 7, GE 8)

SOR ¶ 1.l (\$1,075) is a debt placed for collection by the same creditor as SOR ¶ 1.k. Applicant asserted that the debt was resolved in bankruptcy and was sold to another creditor. (Tr. 34, 88; GE 7, GE 8)

SOR ¶ 1.m (\$1,005) is a debt placed for collection by a bank. Applicant says this is not her debt and believes it was sold to another creditor. (Tr. 35, 88-89; GE 7, GE 8)

SOR ¶ 1.n (\$1,702) is a debt placed for collection by a phone company. Applicant denies this debt and says she has never had service with this carrier. (Tr. 35-36; GE 7)

Applicant said she “makes better choices now” and is more financially stable due to her income and her job. (Tr. 39-40) She pays for her son’s college, about \$1,800 a month room and board, and \$1,200 every two months for his tuition. (Tr. 40) She formerly leased a \$46,000 luxury auto, but has since sold it back to the dealer. She now leases another vehicle for \$699 a month, with a purchase price of about \$40,000 (Tr. 90; GE 9, AE I, AE J, AE K, AE L)

Applicant participated in credit counseling in Chapter 7 and with a prior employer. She has a budget that she tries to follow. She has about \$28,000 in her checking accounts, and about \$10,000 in her savings account. She says she is able to pay all of her bills through her retirement pay and VA benefits. (Tr. 41-44, 94, 98-99)

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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial delinquencies. She and her first husband filed for Chapter 7 bankruptcy protection in 2000, and she did so again in 2014, in the aftermath of her second divorce and her war injuries and related Army disability and retirement. Despite her claims, the SOR debts post-date her 2014 bankruptcy, as they are all listed on credit reports from 2019 and 2022, and those reports indicate that the debts were incurred after the second bankruptcy. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 lists conditions that could mitigate financial considerations security concerns. 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

(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.

The starting point for mitigation analysis in this case is AG ¶ 20(e). Applicant asserted in her background interview, in her answer to the SOR, and repeatedly in her hearing testimony, that the SOR debts are not hers, either because they were resolved in the 2014 bankruptcy discharge, or because the debts were attributable to family members who obtained the accounts fraudulently. She provided no documentation to support any of these assertions. (The 2014 bankruptcy documents, which are in the record, do not support these claims). Without such evidence to bolster her testimony, AG ¶ 20(e) does not apply to counter the Government's evidence that she is responsible for all of the debts in the SOR, as established by credit reports in the record, from 2019 and 2022. (I accept Applicant's testimony about SOR ¶ 1.g, a small past-due medical debt, since the VA or Tricare likely covers her medical expenses).

Applicant worked her way through college, completed additional education and training, served bravely and honorably in the Army both in enlisted service and as a commissioned officer in the Army, was badly wounded in Iraq, and was medically retired as an 80% disabled veteran. She has established a good career in the defense industry in the years since. However, she did not offer a credible explanation for how her recent debts came to be, she did not accept responsibility for them, and has not taken any steps towards resolving those debts.

Unfortunately, since Applicant took the position that the SOR debts are not hers, and she is not responsible for them, she has not done anything to resolve them in any way that might show responsible action on her part. Nor did she explain how the debts came to be. Applicant has worked in the defense industry, with a six-figure salary, for several years, and she earns additional income through her retirement pay and VA benefits. Despite this, she has not made a concerted effort to pay or resolve her SOR debts, all of which post-date the 2014 bankruptcy. AG ¶ 20(b) does not fully apply, and AG ¶ 20(d) does not apply.

Applicant participated in credit counseling through her bankruptcy cases and earlier, but she has not established that her debts are being resolved and are under control. AG ¶ 20(c) does not fully apply.

Applicant's debts are ongoing. She did not establish that the behavior leading to most of her debts was infrequent, unlikely to recur, or no longer casts doubt on her current judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

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.

Applicant has significant whole-person evidence in her favor. She worked her way through college, joined the Army as an enlisted soldier, earned a commission, and eventually served for over 20 years, retiring as a major. She was badly wounded in Iraq, was placed on disability and ultimately retired with an 80% disability rating. She has had a good career in the defense industry in the years since leaving the Army. Unfortunately, this evidence does not outweigh the continuing evidence of delinquent debts, and her lack of action to address them responsibly. She has had two prior bankruptcies, and has numerous subsequent debts that she has not acknowledged or addressed.

Under ¶ E3.1.15 of the Directive, 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." Applicant has the ultimate burden of persuasion to obtain a favorable security decision. Despite strong whole-person evidence, Applicant did not meet this burden to provide sufficient evidence to mitigate security concerns arising from her delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. Applicant did not mitigate the financial considerations security concerns.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.n:	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