



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



In the matter of:)
)
) ISCR Case No. 20-02807
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

10/19/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On January 18, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR (Answer) on May 27, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on July 5, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that she had 30 days from her date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 3, 2022. As of September 7, 2022, she had not responded. The case was assigned to me on October 3, 2022. The Government exhibits included in the FORM, marked as Items 1-8, are admitted in evidence without objection.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor for whom she has worked since December 2019. She was unemployed from December 2009 until July 2012, from December 2014 until July 2018, and from April 2019 until she began her current employment. There is no evidence in the record of her education level. She has not attended school since 2010, at the latest. She has been married to her current spouse since October 2011, after divorcing her former spouse earlier that same year. She has two children, ages 12 and 6. (Items 2, 4, 5)

The SOR alleged Applicant owed two delinquent student loans totaling about \$81,000 (SOR ¶¶ 1.a and 1.b). The SOR also alleged that Applicant's wages were garnished at Employer A in about October 2019 (SOR ¶ 1.c). Despite listing these issues on the Questionnaire for National Security Positions (SF 86) she submitted in January 2020, and discussing them during her February 2020 security interview, she denied both SOR debts in the Answer, claiming that her student loans are not delinquent or in collections. She also denied that her wages were garnished in October 2019 or at any time since then. (Items 2, 4-8)

The delinquent federal student loans totaling about \$81,000 listed in SOR ¶¶ 1.a and 1.b have not been resolved. Applicant began experiencing problems paying these loans in about 2010 because she did not have steady employment. From 2010 until 2019, she made occasional, irregular payments to the collection agencies that serviced her loans after she defaulted on them. She entered into a rehabilitation program at some point between 2017 and 2019, but stopped making payments pursuant to this rehabilitation program in about July 2019. She provided documentary evidence that she entered into another rehabilitation agreement with the servicer of her student loans in January 2021. This date is over a year after she began her most recent employment, and about a year after she submitted her SF 86 and had her security interview.

Pursuant to this 2021 rehabilitation agreement, Applicant was required to make nine monthly payments of \$571. She did not make any payments pursuant to this rehabilitation agreement as she subsequently learned that her loans had been deferred in March 2020 as a result of the COVID-19 pandemic. She provided documentary evidence that, in May 2022, these loans were listed as being current on a credit report, in forbearance until August 31, 2022, and no payment was due until August 31, 2022, at the earliest. The reason for this status is the deferment period on student loan payments as a result of the COVID-19 pandemic; not because Applicant made payments on the loans. (Items 2, 4-8)

Once this deferment period ends, Applicant's monthly payment on these loans will be about \$571. She claimed that she will have sufficient funds to make her student loan payment when it becomes due, and provided an April to May 2022, bank account statement showing a balance of about \$800 to support her position. These student loans are listed on her 2020, 2021, and 2022 credit reports. The 2021 and 2022 credit report show a last payment date of March 2020 and May 2022, respectively. These dates coincide with the beginning of the aforementioned COVID-19 deferment period and the

approximate time period that Applicant contacted the Department of Education about the status of her loans. She has not claimed that she made any payments on these loans since July 2019. These loans were delinquent when the COVID-19 deferment period began. (Items 2, 4-8)

In October 2019, after receiving a letter from the Department of Education, Applicant learned that 15 percent of her wages would be garnished in order to satisfy her aforementioned student loans. She provided a letter from Employer B, for whom she began working in December 2019, stating that Employer B had never been served with a garnishment order with respect to Applicant. Her employment with Employer B began two months after she was put on notice by the Department of Education about a potential garnishment. While there is evidence in the record that the Department of Education threatened a wage garnishment, there is no evidence in the record that Applicant's wages with Employer A were actually garnished. (Items 2, 4-5)

Applicant provided a character reference letter from her employer's security officer stating that she is dedicated, diligent, shows leadership skills, and has been a valuable asset at work. Her security officer also stated that she properly handled company transactions and has been entrusted with training new employees. Applicant claimed that now that she has her current job, she has enough money to meet her financial obligations and pay her student loans when the deferral period ends. She provided documents showing payments on her and her spouse's other loans and expenses, as well as a credit report, to show that she was current on other financial obligations. She provided no evidence that she sought or plans to seek financial counseling. She did not respond to the FORM, so more recent information about her finances is not available. (Item 2)

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 within DOD 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 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.

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

Guideline F, Financial Considerations

The security concern 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.

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's student loans totaling about \$81,000 were in default for almost a decade. She made inconsistent payments on them during that time. While the student loans are no longer considered delinquent because of the COVID-19 deferment, that action does not excuse previously delinquent student loans such as these. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). The above listed conditions are made applicable by SOR ¶¶ 1.a and 1.b., thereby shifting the burden to Applicant to provide evidence in mitigation.

The garnishment listed in SOR ¶ 1.c pertains to the collection of the student loans alleged in SOR ¶¶ 1.a and 1.b. Therefore, the security concerns it poses are largely redundant to those presented by SOR ¶¶ 1.a and 1.b. Additionally, as the evidence only established the threat of a garnishment, and not an actual garnishment with Employer A, the SOR allegation, as written, is not established. While I note the security concern presented by a delinquent federal debt that necessitates involuntary collection, because of the duplicative nature of the allegation and the lack of evidence supporting it, I find in Applicant's favor with respect to SOR ¶ 1.c.

Conditions that could mitigate the 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

From 2010 until 2021, Applicant only sporadically addressed her federal student loans. They were in default for about a decade. A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an Applicant's reliability, trustworthiness, and ability to protect classified information. ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While these debts are in a deferment status because of the pandemic, Applicant defaulted on them prior to the deferment. When student loans are placed in a deferment status after they are in default, Applicant's past inactions are not excused in the context of security clearance eligibility. Given the length of time that these loans were in default, coupled with the automatic nature of the deferment without

meaningful resolution, I cannot find that her unwillingness or inability to address these loans was infrequent or is unlikely to recur.

While Applicant claims that her failure to address these loans was caused by unemployment, she must also show that she acted responsibly under the circumstances. She failed to make this showing. Despite beginning a new job in December 2019, that she alleged would allow her to pay her student loans, she made no payments since then. As evidenced by the timing of her January 2021 rehabilitation agreement and when her student loans changed to a deferment status, she made no meaningful effort to resolve her student loans until after she submitted her SF 86 and had her security interview. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). As such, the timing and nature of her efforts to address these debts undermines her ability to show that she acted in good faith or responsibly under the circumstances. None of the mitigating conditions 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 also considered Applicant's positive character reference. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concern.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge