



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



In the matter of:)
)
) ISCR Case No. 21-01300
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2022

Decision

GARCIA, Candace Le’i, Administrative Judge:

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

Statement of the Case

On June 11, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on June 23, 2021, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing (NOH) on February 10, 2022, scheduling the hearing for March 2, 2022. I canceled the hearing on February 28, 2022, due to Applicant’s illness. DOHA issued a second NOH on March 10, rescheduling the hearing for April 19, 2022. I convened the hearing as rescheduled.

At the hearing, Government Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through F were admitted without objection. Applicant testified. At Applicant's request, I kept the record open until May 24, 2022, for her to submit additional documentation. She did not submit additional documentation by that date, and the record closed. DOHA received the hearing transcript (Tr.) on April 27, 2022. (Tr. at 13-20, 62-64; GE 1-4; AE A-F)

Findings of Fact

Applicant admitted all of the SOR allegations. She is 31 years old. As of the date of the hearing, she was single. She has three children, all minors. She graduated from high school in 2009, and she attended some college but did not earn a degree. (Answer; Tr. at 6-7, 21-22, 60; GE 1, 4)

Applicant was unemployed from December 2016 to August 2017, after she was fired from her employment as a crew leader at a food processing facility. As of the date of the hearing, she had worked for her employer, a DOD contractor, since September 2020. She has never held a security clearance. (Tr. at 7, 22-30; GE 1, 4)

The SOR alleged that Applicant had two delinquent student loans totaling \$30,599 (SOR ¶¶ 1.a, 1.c), seven delinquent consumer debts totaling \$30,448 (SOR ¶¶ 1.b, 1.e, 1.h, 1.m, 1.o, 1.xx, 1.yy), and 42 delinquent medical debts totaling \$14,587 (SOR ¶¶ 1.d, 1.f, 1.g, 1.i - 1.l, 1.n, 1.p - 1.ww). The SOR allegations are established by Applicant's admissions in her Answer, in her October 2020 security clearance application (SCA), and in her January 2021 background interview; and by credit bureau reports from 2020 and 2022. All of the SOR debts are reported on the 2020 credit bureau report. SOR debts ¶¶ 1.a, 1.c, 1.o, and 14 medical debts totaling \$7,157 are reported on the 2022 credit bureau report. The 2022 credit bureau report reflects that Applicant paid six medical debts totaling \$3,120. (Answer; GE 1-4)

Applicant attributed her delinquent debts to the following factors: (1) her period of unemployment from December 2016 to August 2017; (2) minimal income from August 2017 to September 2020; (3) medical issues related to a condition for which she was diagnosed in 2014, the birth of her eldest child in 2015, and medical expenses incurred during her period of unemployment when she did not have medical insurance; (4) personal issues, to include moving costs she incurred in 2021 when she left her children's father; and (5) being a single mother of three children. She acknowledged that her financial mismanagement also contributed to her delinquent debts. (Tr. at 22-30, 50-55, 60-61; GE 1, 4)

Applicant earned approximately \$45,000 annually from December 2014 to December 2016, before becoming unemployed. When she experienced medical issues related to the birth of her eldest child in November 2015, she took leave for approximately six months. She received short-term disability insurance for one month and was unpaid for five months. She sought paid family and medical leave under the Family and Medical Leave Act (FMLA), and she was fired for falsifying her FMLA documentation. As of her SCA, her continued financial difficulties prevented her from taking action to resolve her

debts. She stated therein that she planned to do so and was working on repairing her credit. She indicated during her background interview that she paid several minimal delinquent accounts, but acknowledged that she had a number of outstanding debts remaining. She planned to resolve her delinquent debts by contacting the creditors to negotiate settlements and through debt consolidation. (Tr. at 22-30, 50-55, 60-61; GE 1, 4)

Student Loans

SOR ¶¶ 1.a and 1.c are for two delinquent federal student loans totaling \$30,599. Applicant indicated during her background interview that her student loans, during the COVID-19 pandemic, were placed in deferment until May 2021. She testified that since speaking with a U.S. Department of Education (DOE) representative in approximately 2020 about placing her student loans in deferment, she believed that her student loans were deferred. She did not understand why they were reported as delinquent while they were in deferment. She intended to set up a payment plan to repay her student loans. She also testified that an unrecalled amount of her student loans were associated with a college that went out of business, and she was in the process of trying to obtain student loan forgiveness for the associated student loans since speaking with the DOE representative in 2020. (Tr. at 21-22, 30-34, 55-58; GE 4)

Consumer Debts

SOR ¶¶ 1.b, 1.e, 1.h, 1.m, 1.o, and 1.xx to 1.yy are for seven delinquent consumer debts totaling \$30,448.

SOR ¶ 1.yy is a duplicate of ¶ 1.b, which is an auto loan in collection for \$12,336, for Applicant's car that was repossessed during her period of unemployment. As of the date of the hearing, Applicant had not made any attempts to resolve this debt, but she intended to contact the creditor to negotiate a payment arrangement. (Tr. at 34-35, 49; GE 1-4)

SOR ¶ 1.e is for a \$2,112 mobile service account in collection. As of the date of the hearing, Applicant had not made any attempts to resolve this debt, but she intended to. (Tr. at 37-38; GE 1-4)

SOR ¶ 1.xx is a duplicate of SOR ¶ 1.h, which is a retail credit card in collection for \$913. As of the date of the hearing, Applicant had not made any attempts to resolve this debt. (Tr. at 39, 49; GE 1-4)

SOR ¶ 1.m is for a \$500 charged-off payday loan. Applicant testified that a lien was placed against her for this debt, and she was working with the creditor to resolve the lien. (Tr. at 41; GE 1-4)

SOR ¶ 1.o is for a cash loan in collection for \$456. As of the date of the hearing, Applicant had not made any attempts to resolve this debt, but she intended to. (Tr. at 41; GE 1-4)

Medical debts

SOR ¶¶ 1.d, 1.j, 1.l, 1.n, 1.p - 1.s, 1.v, 1.w, 1.z, 1.ee, 1.ii, 1.kk, and 1.ll are 15 medical debts totaling \$7,777, in collection with the same collection agency. Applicant paid \$2,849 to the collection agency in February 2022. She testified that her payment was applied to the various 15 medical debts held by the collection agency. Documentation reflects that her payment of \$2,849 was applied to the account number for SOR ¶ 1.q, as reported in the 2020 credit bureau report. She intended to obtain further documentation to show which of these 15 medical debts were resolved. She was unsure whether payments she made to a debt collection agency in February 2022, for \$69 and \$131, correlated to any of these debts. The account numbers reflected in the documentation does not correspond to any of the account numbers for these debts, as reported in the 2020 credit bureau report. (Tr. at 35-37, 48-50; GE 1-4; AE D, E, F)

SOR ¶¶ 1.f and 1.g are two medical debts totaling \$3,092, in collection with the same collection agency. Applicant was unclear about the status of these debts. She stated that she would look into them. (Tr. at 38-39; GE 1-4)

SOR ¶ 1.i is for a \$800 pediatric medical debt in collection. Applicant intends to resolve this debt. (Tr. at 39-40; GE 1-4)

SOR ¶¶ 1.k, 1.ff, and 1.gg are three medical debts totaling \$890, in collection with the same collection agency. Applicant stated that she paid SOR ¶¶ 1.ff and 1.gg. She stated that she spoke with the creditor, and the creditor told her she only owed SOR ¶ 1.k. (Tr. at 40-41; GE 1-4)

SOR ¶ 1.t is for a \$359 medical debt in collection. Applicant was unsure of the status of this debt. She stated that she would look into it. (Tr. at 42; GE 1-4)

SOR ¶¶ 1.u, 1.x, 1.y, 1.bb, 1.cc, 1.dd, 1.mm, 1.nn, and 1.oo are nine medical debts totaling \$1,103, in collection with the same collection agency. These medical debts are associated with routine medical appointments for Applicant's children. A February 2022 account payment history from the collection agency reflects that Applicant made payments totaling \$1,664 between August 2019 and February 2021, and her outstanding balance was \$680. She testified that she made a \$389 payment to the collection agency in February 2022, but she did not provide corroborating documentation. (Tr. at 42-44; GE 1-4; AE C)

SOR ¶ 1.aa is for a \$131 emergency physician debt in collection. Applicant believed she paid this debt, but she did not provide corroborating documentation. She was unsure whether a \$131 payment she made to a debt collection agency in February 2022 correlated to SOR ¶ 1.aa. The account number reflected in the documentation does not correspond to the account number for SOR ¶ 1.aa, as reported in the 2020 credit bureau report. (Tr. at 44-48; GE 1-4; AE E)

SOR ¶ 1.hh is for a \$85 medical debt in collection. Applicant was unsure what this debt was for. She believed she paid it. She did not provide corroborating documentation. (Tr. at 48; GE 1-4)

SOR ¶¶ 1.jj and 1.pp to 1.ww are for nine medical debts, in collection for \$350. Applicant believed these debts were in collection with the same collection agency as SOR ¶¶ 1.d, 1.j, 1.l, 1.n, 1.p - 1.s, 1.v, 1.w, 1.z, 1.ee, 1.ii, 1.kk, and 1.ll. She believed she paid a number of these debts. She intended to obtain documentation to show which debts were resolved. (Tr. at 35-37, 48-50; GE 1-4; AE D, E, F)

As of the date of the hearing, Applicant earned approximately \$48,000 annually. She did not have any other delinquent debts. She testified that she was current on her taxes, and she expected a \$9,000 refund when she filed her 2021 income tax returns. She intended to use her refund to resolve her delinquent debts. She testified that she received credit counseling in 2019. She testified that she developed a budget to keep track of her income and expenses, and her monthly net remainder was approximately \$600. (Tr. at 51-52, 55, 58-62, 64; AE A, B)

Policies

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(a), 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 Exec. Or. 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* Exec. Or. 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 was unable to pay her debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(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;

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Conditions beyond Applicant's control contributed to her financial problems. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. SOR ¶¶ 1.xx and 1.yy are duplicates of SOR ¶¶ 1.h and 1.b, respectively, and I find SOR ¶¶ 1.xx and 1.yy in Applicant's favor. Applicant began paying her medical debts in SOR ¶¶ 1.d, 1.j, 1.l, 1.n, 1.p through 1.s, 1.u through 1.z, 1.bb through 1.ee, 1.ii, and 1.kk through 1.oo in August 2019, and she intended to continue to resolve them. I therefore find those SOR debts in Applicant's favor.

Applicant did not provide corroborating documentation of her efforts to resolve her outstanding student loans in SOR ¶¶ 1a and 1.c; her consumer debts in SOR ¶¶ 1.b, 1.e, 1.h, 1.m, and 1.o; and her remaining medical debts in SOR ¶¶ 1.f, 1.g, 1.i, 1.k, 1.t, 1.aa, 1.ff, 1.gg, 1.hh, 1.jj, 1.pp, 1.qq, 1.rr, 1.ss, 1.tt, 1.uu, 1.vv, and 1.ww. She has not established good-faith efforts to repay these debts. While she received financial counseling in 2019, her finances are not under control, and her remaining financial issues continue to cast doubt on her judgment, trustworthiness, and reliability. I find that ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply to these SOR debts.

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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraphs 1.p - 1.s:	For Applicant
Subparagraph 1.t:	Against Applicant
Subparagraphs 1.u - 1.z:	For Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraphs 1.bb - 1.ee:	For Applicant
Subparagraphs 1.ff - 1.hh:	Against Applicant
Subparagraph 1.ii:	For Applicant
Subparagraph 1.jj:	Against Applicant

Subparagraphs 1.kk - 1.oo:	For Applicant
Subparagraph 1.pp - 1.ww:	Against Applicant
Subparagraphs 1.xx-1.yy:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge