



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



In the matter of:)
)
) ISCR Case No. 21-02272
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On December 1, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

In an undated answer to the SOR, Applicant elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on June 2, 2022. She was afforded an opportunity to file objections and submit material in refutation, extenuation,

or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 8. (Item 1 is the SOR.) Applicant did not provide a response to the FORM or object to the Government's evidence. Items 2 through 8 are admitted into evidence. The case was assigned to me on September 15, 2022.

Findings of Fact

Applicant denied all the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. She earned an associate's degree in 2007, a bachelor's degree in 2010, and a master's degree in 2012. She served in the military from 1997 until her honorable discharge in 2003. She then served in the Army National Guard Active Reserve from November 2003 until she was honorably discharged in June 2005. She married in 2013 and has two stepchildren, ages 22 and 18. (Item 3)

The SOR alleges four delinquent debts (¶ 1.a - \$21,000; ¶ 1.b - \$16,574; ¶ 1.c - \$11,173; and ¶ 1.d - \$2,500) totaling approximately \$51,247. The debts are supported by Applicant's admissions made in her answer to the SOR and during her January 2019 background interview with a government investigator, a civil judgment filed in August 2021, and credit reports from May 2022 and April 2021. (Items 2, 3, 5, 6, 7, 8)

In Applicant's January 2019 security clearance application (SCA), she reported delinquent student loans for \$37,911; \$17,387; and \$20,770 and said she was working with the creditor to make monthly payment arrangements. (Item 3)

Applicant was interviewed by a government investigator in January 2019 and attributed her financial difficulties to her husband's unemployment for 15 months beginning in January 2015, and that they used credit cards for their living expenses and got behind on them and her student loans. At some point, she enrolled in a debt-relief program (DRP) to settle her outstanding credit card balances. She said she had paid some of the debts on a monthly basis and negotiations were ongoing for one credit card. (Item 7)

Applicant did not dispute the debts that she was confronted with by the investigator that were later alleged in the SOR. She stated that they were being paid through the DRP. She was asked specifically about student loans she reported as delinquent in her SCA and confirmed each loan was being repaid through her DRP. In her SOR answer, she acknowledged the debt in SOR ¶ 1.a, but disputed the amount she owed. She said she received a letter from collection attorneys requesting payment for the student loan balance, and she disputed the amount. She is waiting for the attorneys to explain why she owes so much money on the account. Her April 2021 and May 2022 credit reports show the debt in SOR ¶ 1.a is charged off, disputed, and that the resolution process was concluded. Applicant did not provide a response to the FORM updating the status of this debt and it remains unresolved. (Items 1, 2, 5, 6, 7)

Applicant stated in her SOR answer that the debts in SOR ¶¶ 1.b and 1.c, both to the same creditor, were being resolved through monthly payments. She stated that she settled the account in SOR ¶ 1.b for less than the full amount and had paid down approximately half of the debt. She provided payment records that show in March 2021, she agreed to settle the debt for \$15,231 on a current balance at the time of \$23,432,, and was required to make 18 monthly payments of \$846. Her payment record shows she made payments from March through November 2021. As noted above, Applicant received the FORM in June 2022 and had an opportunity to provide additional information, but she did not respond and did not provide an updated status of her payments. I am unable to determine if she continued to make the required monthly payments to resolve the debt. (Item 2)

Applicant affirmed in her answer to the SOR that she is responsible for the debt alleged in SOR ¶ 1.c for a judgment for a student loan. She provided an unsigned copy of a consent judgment in her sister's name, but the civil judgment recorded in August 2021 in the district court is in Applicant's name for \$23,432. Applicant agreed to settle the account for \$14,000. It is unknown why her sister's name is on the consent judgment. The civil judgment is binding. She stated that she has an installment agreement to pay \$800 a month. She provided documents to show she made payments from April 2021 to November 2021. She did not provide a response to the FORM updating the status of the debt. I am unable to determine if she continued to make the required monthly payments to resolve the debt. (Items 2, 8)

Applicant stated in her SOR answer that in June 2018 she reached a settlement agreement of \$851 with the creditor for the debt in SOR ¶ 1.d. In January 2020, she closed her account with DRP and took over paying her remaining debts. She said she paid this debt, but the creditor did not clear her account. Her most recent credit report from May 2022 reports the debt as charged off. She did not provide documentation to show the debt has been resolved. (Items 2, 5)

In Applicant's SOR answer, she stated that she works a total of 20 hours Monday through Friday and another 15 to 20 hours on Saturday and Sunday making food deliveries. She said she has an additional \$500 at the end of the month after making the payments on the debts noted above. (Item 2)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had four delinquent debts totaling approximately \$51,247 that she was unable to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; 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.

Applicant attributed her financial problems to her husband's 15 months of unemployment beginning in approximately January 2015, more than seven years ago. This condition was beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She had numerous delinquent debts that she disclosed on her SCA and resolved some of them through her agreement with DRP. The SOR alleged those that were not resolved. Applicant stated in her answer to the SOR that she had payment agreements for the debts in SOR ¶¶ 1.b and 1.c and provided proof of her payments. The Government's FORM put Applicant on notice that further documentation was required. She did not provide evidence that she continued to make the required payments. I have considered that she has made some payments, but without additional evidence, I cannot conclude that she has adhered to a good-faith effort to repay the creditor. I find AG ¶ 20(b) has some application. I find AG ¶ 20(d) applies to the extent that Applicant made some payments on the debts. Although there is some mitigation, without additional evidence, these debts are unmitigated.

The debt in SOR ¶ 1.d is reported as charged-off on Applicant's April 2021 and May 2022 credit reports. There is no documentary evidence to support it was paid. There is no evidence that Applicant has participated in financial counseling. AG ¶ 20(c) does not apply.

Applicant had numerous delinquent student loans and it appears she paid some of them. The collection attorneys for the debt in SOR ¶ 1.a noted that the debt is a delinquent student loan. Applicant stated that she is waiting for the collection attorneys to explain why the balance of the loan is so high. Her dispute is reported on her credit report and says that the resolution process is concluded. Without additional evidence on what action she has taken to resolve the issue, I am unable to apply the mitigating condition under AG ¶ 20(e) to this debt. Applicant did not provide an update as to the status of her dispute beyond what she stated in her answer to the SOR. AG ¶ 20(e) 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 the 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 not met her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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.d:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge