



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



In the matter of:)	
)	
)	ISCR Case No: 22-00054
)	
Applicant for Security Clearance)	

Appearances

For Government: Dan O'Reilley, Esquire, Department Counsel
 For Applicant: *Pro se*
 11/01/2022

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. National security eligibility is denied.

Statement of Case

On February 17, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). Applicant responded in a March 23, 2022 Answer to the SOR, and requested that her case be decided by an administrative judge on the written record without a hearing.

On June 15, 2022, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on June 22, 2022. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of it. She received the FORM on June 28, 2022 and timely submitted additional information that I marked as Applicant Exhibit (AE) A. On October 3, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. I

received the case file on October 11, 2022. All Items and AE A are admitted without objection.

Findings of Fact

In her Answer, Applicant admitted the allegation in SOR ¶ 1.d, and denied the allegations in SOR ¶¶ 1.a through 1.c, and 1.e through 1.g with explanations. She denied three alleged student loans because she said she no longer owes them to the alleged creditor, as they were transferred to the U.S. Department of Education (DoEd) in November 2021 and are current. (Item 2) Her admission and explanations are incorporated into these findings of fact.

Applicant is 50 years old and unmarried. She does not have children. She attended college but has not yet completed a degree. She has worked for a federal contractor since September 2010 and received a Secret clearance in 2011. In January 2021, she submitted a security clearance application (SCA) for renewal of her clearance. Since that date, she has also been working a second job at a retail store. (Item 3) In March 2021, a government investigator interviewed her about her finances. (Item 4)

Applicant attributes her financial problems to medical problems that started in 2011. She also said she has not been earning enough income to pay her debts over the years, including student loans. (Item 2; Item 4 at 7) She submitted her January 2022 budget. Her net monthly income is \$2,588 and her monthly expenses equal her income. (AE at 3, 5, 7) She did not indicate that she has taken budget or credit counseling.

In March 2020, as a result of the COVID-19 pandemic, the DoEd placed all federal student loans in forbearance and has since extended the student loan payment pause through December 31, 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collection on defaulted loans. (See Federal Student Aid: <https://studentaid.gov/announcements-events/covid-19>.)

On November 10, 2021, the U.S. Department of Education (DoEd) transferred three student loans Applicant owed to GM to DoEd. Contrary to Applicant's assertion in her Answer that these student loans are the three student loans alleged in the SOR, these loans were not alleged in the SOR. They are additional student loans owed by Applicant. In its notice to Applicant of the transfer, DoEd stated that Applicant's current balance on one transferred loan was \$43,535 with an outstanding interest balance of \$311. On November 10, 2021, DoEd also notified Applicant that the current balance on another transferred loan was \$22,740 with an outstanding interest balance of \$155. (Item 2 at 4, 5) These two loans total \$66,275. Their status was listed on Applicant's November 2021 CBR as "pays as agrees." (Item 5 at 4)

Based on credit bureau reports (CBR) from February and November 2021, the SOR alleged six delinquent accounts totaling \$77,487, including three student loans totaling \$76,456. (Item 5, Item 6) The status of each alleged debt is as follows:

1. (1.a) The student loan owed to DoEd (formerly USF) for \$51,618 was reported delinquent in March 2017. Applicant said she was having medical problems at the time of the loan and did not earn enough money to pay her debts. (Item 4 at 4) Both the February and November 2021 CBRs, report the debt as being in collections. (Item 5 at 2; Item 6 at 2) There is no evidence that Applicant established a payment plan for this loan before the COVID-19 federal deferment was implemented.
2. (1.b) A \$66 medical debt is unresolved. Applicant denied the debt because she did not recognize it. In her Answer, she said she would investigate it. (Item 2 at 2) During her March 2021 background interview, she told an investigator that she was unfamiliar with the debt and intended to contact the creditor. According to her November 2021 CBR, the debt was placed for collection in November 2020. (Item 4 at 7, Item 5 at 2)
3. (1.c) A \$56 medical debt is unresolved. Applicant denied the debt and said she did not recognize it. In her Answer, she said she would investigate it. (Item 2 at 2) During her March 2021 interview, she said the debt became delinquent in August 2017, and that she intended to pay it when her finances were better. (Item 4 at 5) It is in collection. (Item 5 at 2)
4. (1.d) A \$919 debt owed to a jewelry store was paid in November 2021. It is resolved. (Item 2 at 6)
5. (1.e) The student loan owed to DoEd (formerly NL) for \$16,316 was opened in March 2006. According to the November 2021 CBR, as of July 2019, it was reported as more than 120 days past due and was transferred to another creditor. (Item 5 at 4) There is no evidence that Applicant established a payment plan for this loan before the COVID-19 federal deferment was implemented.
6. (1.f) The student loan owed to DoEd (formerly NL), for \$8,522 was opened in March 2006. According to the November 2021 CBR, as of July 2019, it was reported as more than 120 days past due and transferred to another creditor. (Item 5 at 4) There is no evidence that Applicant established a payment plan for this loan before the COVID-19 federal deferment was implemented.

In her response to the FORM, Applicant reiterated that she has she has not been able to make payments on her student loans in some time because she does not earn enough money and has health problems. She is aware of her outstanding student loan debt and she would like to make payments on them. (Item 4) In response to questions

about non-alleged student loans, Applicant told an investigator in March 2021 that she had paid and resolved some loans in the past. (Item 4) The February 2021 CBR verifies that some of Applicant's debts are current and in good standing. (Item 6 at 7, 8)

Policies

The national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national

security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 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 handling 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 has a history of being unable to satisfy her debts, in particular, three student loans, which became delinquent in 2017 and 2019, and have not been addressed. She spends all of her monthly income on current living expenses, leaving no funds available to address her large student loan debt. She also has two small old medical bills that are unresolved. All SOR-alleged debts are documented by two credit reports. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

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

Applicant argues that the three alleged student loans are current because they were transferred to DoEd and are in federal deferment status. While that pause may affect the payment status of the three loans, it does not mitigate the debts because they were delinquent prior to March 2020, and she did not present evidence that she had taken steps to establish payment plans before that date. (See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021)(noting student loans totaling about \$20,000 that were delinquent before the COVID-19 federal deferment may be the basis for revocation of access to classified information.)

Applicant's delinquent debts, totaling \$77,497, are recent and ongoing. She failed to establish mitigation under AG ¶ 20(a). Her health problems and underemployment over the past years have been circumstances beyond her control; however, she did not present evidence that she attempted to responsibly manage her debts while they were accumulating, beginning in at least 2017. AG ¶ 20(b) partially applies. In November 2021,

she paid and resolved an old jewelry debt. There are no clear indications that any of the other five alleged debts are being resolved through payment plans or are under control. There is no evidence that she sought credit or budget counseling, or that she had initiated payment plans on the \$76,456 student loan debt prior to the COVID-19 pause in payments. She has not addressed two small medical debts alleged in the SOR: one became delinquent in August 2017, and the other became delinquent in November 2020. The record establishes mitigation under AG ¶ 20(d) for the jewelry debt alleged in SOR ¶ 1.d. The record does not establish mitigation under AG ¶¶ 20(c) or 20(d) for the other five alleged 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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. According to Applicant, she has been experiencing health problems since 2011 and underemployment for a long period. According to her February 2021 CBR, she is current with some ongoing expenses. However, one large alleged student loan has been delinquent since 2017, and another two loans since 2019. None of them were addressed prior to the March 2020 federal deferment, or subsequent to it. During her interview in March 2021, she said that she would investigate and resolve two old small medical debts that total \$121. They remain unresolved.

The evidence raises concerns that Applicant does not have a clear understanding of the number or amount of student loans she owes. The SOR alleged she owes over \$76,000 for three delinquent loans, and the two other loans transferred to DoEd in November 2021 total over \$66,000. According to this record, she owes approximately \$142,000 in student loans. To date, she has not established a track record of responsibly

addressing her delinquent debts, and her monthly budget reflects no available funds with which to do so. The evidence leaves me with questions and concerns as to Applicant's present eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	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 interest to continue Applicant's eligibility for access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge