



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



In the matter of:)	
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)	ISCR Case No. 22-00080
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

10/13/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from her problematic financial history. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application (SCA) on October 22, 2019. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on April 1, 2022, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry 1960*, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On April 1, 2022, Applicant submitted an answer (Answer) to the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) in lieu of a hearing. On April 27, 2022, Department

Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA sent the FORM to Applicant on April 28, 2022, who received the FORM on May 2, 2022. She was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. She responded to the FORM on May 31, 2022 (Response), to which the Government did not object. The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted without objection. The case was assigned to me on July 21, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 42 years old, married, with two sons, ages seven and four. She is a college graduate (May 2003). Since June 2019, she has worked for a defense contractor. She has been fully employed since August 2008. (Item 3.) Her financial problems began in 2018, when she underwent an expensive elective medical procedure and her husband was laid off "for several months." (Item 6.) She identified seven delinquent debts in her October 2019 SCA, one of which is included in the SOR. She has not received any financial counseling. (Items 3 and 6.) The SOR debts were reported delinquent in a September 2020 credit report. (Item 5.)

The SOR alleged five delinquent debts either charged off, in collection, or past due totaling \$26,172 (including past due mortgage account). (Item 1.) The SOR debts are supported by the record. (Items 4 and 5.)

SOR ¶ 1.a. is credit card account that has been charged off in the amount of \$8,254. Applicant admitted this debt, stating: "I sent [*sic*] up a payment plan and issue will be resolved by June 29, 2022." (Item 2.) She updated her Answer and added that as a result of a settlement, this debt will be resolved by June 29, 2022. (Response.) She did not provide any documents in support of her Answer or Response.

SOR ¶ 1.b. is a credit card account charged off in the amount of \$7,900. Applicant admitted this debt, stating: "I notified the bank in April 2022 that I will set up a 2-month payment plan to resolve the delinquency beginning on July 29, 2022." (Item 2.) Applicant updated her Answer and added that as a result of the 2-month payment plan, this debt will be resolved by July 29, 2022. (Response.) She did not provide any documents in support of her Answer or Response.

SOR ¶ 1.c. is a consumer account in collection in the amount of \$1,814. Applicant admitted this debt, stating: "I set up payment plan and issue will be resolved by April 30, 2022." (Item 2.) She updated her Answer and added that as a result of a settlement, this debt was paid in full on April 30, 2022. (Response.) She did not provide any documents in support of her Answer or Response.

SOR ¶ 1.d. is a medical account in collection in the amount of \$201. Applicant admitted this debt, stating: “I will reach out to remedy by May 15, 2022.” (Item 2.) She updated her Answer and added that as a result of a settlement, this debt was paid in full on May 31, 2022. (Response.) She did not provide any documents in support of her Answer or Response.

SOR ¶ 1.e. is home mortgage account that is past due in the amount of \$8,003 with a total balance of \$344,577. Applicant admitted this debt, stating: “I requested a new payment due date from [mortgagee] to align with salary deposits. This should remedy the delinquency going forward. Payments of \$5,200 will be reflected on mortgage statement by April 15, 2022. Current balance is \$335,798.96.” (Item 2.) Applicant updated her Answer and added that a new payment schedule has been set, to which she has complied. (Response.) She did not provide any documents in support of her Answer or Response.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Guideline F, Financial Considerations

The security concern relating to Guideline F 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.

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are applicable in this case:

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

The SOR debts are established by Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a) and 19(c) apply.

Guideline F 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 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.

The SOR debts have been reported delinquent since at least September 2020 and have remained delinquent. The inception of Applicant's delinquencies is not that long ago. And since then, the SOR debts have remained delinquent. That Applicant waited

until **after** the SOR was issued in April 2022 to address her delinquent debts calls into question her judgment and reliability. She knew in October 2019 when she completed her SCA that delinquent financial accounts were material to her eligibility for a national security clearance. Yet even with that knowledge, she took no action until the issuance of the SOR unmistakably jeopardized her security clearance. Her delinquent debts are not mitigated by AG ¶ 20(a).

The record shows that two circumstances contributed to Applicant's financial difficulties in 2018, her expensive elective medical procedure and her husband being laid off "for "several months." AG ¶ 20(b) may apply. The triggering events must be "largely beyond [an applicant's] control." Applicant did not characterize her expensive elective medical procedure as an "emergency." Therefore, it was not largely beyond her control within the contemplation of AG ¶ 20(b).

The lay-off of Applicant's husband, however, fits squarely within the language of AG ¶ 20(b) (loss of employment). But that does not end the inquiry. Applicant must then show that she acted responsibly in the face of those adverse circumstances. Given the discussion under AG ¶ 20(a), she did not do so. Only the issuance of the SOR spurred her into action to resolve her debts. That is not responsible conduct. Her delinquent debts are not mitigated by AG ¶ 20(b).

AG ¶ 20(d) needs to be considered, because a number of Applicant's Answers and Responses speak of setting up payment plans with creditors and some debts being settled, or paid in full. There is no reason to doubt those assertions, but they come "too little, too late." The conclusion is inescapable that the issuance of the SOR motivated Applicant to address her delinquent debts. This is not considered to be a good faith resolution of debts. I find that AG ¶ 20(d) does not apply (lack of good faith). See ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

One final infirmity is that Applicant failed to provide any documents in support of her Answer or her Response. The Appeals Board has routinely held that it is reasonable to expect applicants to produce documentation supporting their efforts to resolve debts. See, e.g., ISCR Case No. 20-00615 at 2 (Jun. 7, 2021).

The Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about her eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising 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. – e.:	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 eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge