



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



In the matter of:)
)
) ISCR Case No. 21-00513
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has ongoing, unresolved financial delinquencies that she has not addressed. She also has an earlier history of financial difficulty, as shown by a 2011 bankruptcy. She did not provide sufficient evidence to mitigate security concerns arising from her delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 25, 2019. On June 16, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued her a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The CAF issued the SOR under Executive Order (Exec. Ord.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), implemented by the DOD on June 8, 2017.

Applicant answered the SOR on July 13, 2021, and later submitted an additional, undated response, in which she addressed each SOR allegation. She also requested a

hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on May 4, 2022. On September 2, 2022, DOHA issued a notice scheduling the hearing for September 26, 2022, by video-teleconference through an online platform.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 7, which I admitted without objection. Applicant provided Applicant Exhibits (AE) A and B, which were attached to her answer to the SOR. They were admitted without objection. Applicant also testified. I held the record open until October 3, 2022, to give Applicant the opportunity to submit additional documents. She timely submitted two documents, which I marked as AE C and AE D and admitted without objection. The record closed on October 3, 2022. DOHA received the hearing transcript (Tr.) on October 5, 2022.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.g, with brief explanations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence submitted, I make the following findings of fact.

Applicant is 44 years old. She has never married. She lives with her mother and her 20-year-old daughter. Her daughter had health issues last year so Applicant took time off from work to care for her. She was not able to find stable employment with a good income so she could not pay her bills until recently. (Tr. 30-33, 39)

Applicant disclosed details about her employment history on her SCA and discussed her employment history during her testimony. (GE 1; Tr. 24-50) After the hearing, she provided a résumé. (AE D)

Applicant has spent many years as a cleared government contractor working with a variety of federal agencies. She was a document manager for a contractor for about three years, from 2007-2010. She was then laid off at the end of the contract and was unemployed for about a year, until May 2011. (GE 1) She then worked as an administrative assistant, with a security clearance, for a government contractor from May 2011 to March 2018, when her employer went out of business. She worked for another contractor from March 2018 to July 2018 as a cleared escort into classified areas. She left that job after a personality conflict with a supervisor. She then worked for a cleaning company, cleaning secured buildings, for about six months in late 2018, earning \$25 an hour. (Tr. 40-47; GE 1; AE D)

Applicant worked as an administrative specialist with another government agency (AGA) for most of 2019. She earned \$22 an hour. She then worked as a contractor on an Air Force Base during 2020 and 2021, earning \$31 an hour. She was under-employed during the COVID-19 pandemic due to the limited need for on-site security. She worked for the first six months of 2022 with a medical transport company at \$15 an hour but was laid off in July 2022. She was then unemployed until two weeks before the hearing, when she began working for a large retailer. A prospective employer in the defense industry has sponsored her for a clearance. If her clearance is granted, she expects to work as an

administrative assistant for a defense contractor, earning \$62,000 annually. This would put her in better position to address her debts, though not all at once. (Tr. 24-30, 35-40)

The SOR allegations concern six delinquent debts, totaling about \$50,200, and a 2011 Chapter 7 bankruptcy. The debts are established by credit reports from March 2019 (SOR ¶¶ 1.e and 1.f) and January 2021 (SOR ¶¶ 1.a-1.d), GE 3 and GE 4, respectively.

Applicant filed for Chapter 7 bankruptcy in February 2011 during a period of unemployment after she was laid off at the end of an employment contract. She declared \$37,000 in liabilities. Her debts were discharged in May 2011. (GE 5)(SOR ¶ 1.g)

On her 2019 SCA, Applicant disclosed some of her more recent debts and asserted that they were due to lack of work, resulting in financial hardship. (GE 1 at 32-34) She also discussed her debts and financial situation in her May 2019 background interview. (GE 6) The debts are detailed as follows:

SOR ¶ 1.a (\$19,182) is a charged-off debt relating to an auto. In 2016, Applicant purchased a used luxury vehicle for about \$30,000. The car was repossessed after about two years. The charged-off amount is what is owed on the vehicle after it was sold at auction. The creditor proposed a settlement amount of \$13,000 but Applicant was unable to pay it. She has taken no further action. (Tr. 51-54; GE 2; GE 3; GE 4 at 3) The debt remains listed as charged off on a current credit report. (GE 7)

SOR ¶ 1.b (\$2,726) is an account placed for collection. This debt concerns unpaid rent for an apartment where Applicant lived from May 2015 to July 2018, when she was evicted. The creditor initially worked with her to resolve the debt but it remains unpaid. (Tr. 54-55; GE 2; GE 3)

SOR ¶ 1.c (\$437) is a past-due medical debt owed to an unidentified creditor. Applicant said in her answer that she believes Medicaid should cover the debt. She does not know what it is for. (GE 2, GE 3, GE 4; Tr. 55)

SOR ¶ 1.d (\$23,489) is a charged-off debt related to an auto repossession. Applicant opened the account in August 2014, she made the most recent payment in February 2016, and it was reported in March 2021. Applicant has taken no action to address the remaining debt owed. (GE 2; Tr. 56-57) While a recent credit report lists a zero balance, there is no indication that this is due to actions by Applicant. (GE 7)

SOR ¶ 1.e (\$4,335) is a charged-off debt relating to lease-to-own home furniture. Applicant entered into the agreement in November 2017 and made one payment. She did not return the furniture. She received a \$2,000 settlement offer but was not able to pay it. She has made no efforts to resolve the debt. (GE 4 at 4; Tr. 57-59)

SOR ¶ 1.f (\$54) is a debt placed for collection by a power company. (GE 4) Applicant asserted that the debt is paid. After the hearing, she provided corroborating documentation. (Tr. 59-60, 71; AE C) This debt is resolved.

Applicant has lived with her mother since mid-2018. She pays \$500 in rent to her mother (formerly \$900 a month). Her mother is a retired federal employee, and she pays most of the household expenses. (GE 1; Tr. 39-40, 70) Applicant said she is current on her taxes and has no other delinquent debts. She indicated no exorbitant expenses. She does not use a budget. (Tr. 66-68)

Applicant has not participated in recent credit counseling, though she said she should do so. At some point, she retained a debt-consolidation law firm, but they took some of her money without taking action to address her debts. (Tr. 68-70)

With her answer to the SOR, Applicant provided two letters of recommendation, both from former co-workers in cleared positions at government contractor jobs. Both references attest that she is knowledgeable, diligent, and a hard-working employee, as well as honest, trustworthy, and dependable. She is also “a joy to work with” and a “team player.” They recommend her for a security clearance. (AE A, AE B)

Policies

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

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out, in pertinent part, 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. . . .

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 has a history of financial delinquencies. She filed for bankruptcy in 2011, and she is once again in financial difficulty. She has incurred various outstanding debts, including two recent repossessions. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 lists conditions that could mitigate financial considerations security concerns. 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, or 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, 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 has been gainfully employed by a variety of federal contractors in recent years. She was underemployed in 2020 and 2021 due to the pandemic, and she worked a lower-paying job for the first six months of 2022. She was unemployed from July 2022 until two weeks before the hearing. This has limited her income, and, accordingly, she has not been able to address her debts in a significant way. Her debts are therefore ongoing, and continue to cast doubt on her current judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant has experienced some employment instability and financial hardship, but she also has a track record of spending beyond her means. She has limited her expenses by living with her mother for several years, but she has not addressed her debts in any reasonable or significant way. She has not participated in credit counseling and her debts are not being resolved or under control. AG ¶¶ 20(b), 20(c), and 20(d) do not apply.

Applicant disputed and resolved the power company debt (SOR ¶ 1.f) and provided a reasonable explanation for the small medical debt (SOR ¶ 1.c). These debts are resolved under AG ¶ 20(e).

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.

I considered Applicant's prior experience as a cleared employee of several government contractors, but this does not outweigh the security concerns relating to her financial delinquencies, which remain ongoing. Applicant needs to address her debts in

a responsible way by establishing a track record of steady payments towards her debts and a significant period of financial stability before she can again be considered eligible for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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 a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge