



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



In the matter of:)	
)	
)	ISCR Case No. 21-00807
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On September 15, 2021, the Department of Defense 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

On September 27, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 15, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 30, 2022, scheduling the hearing for October 18, 2022. The hearing was held as

scheduled. The Government offered exhibits (GE) 1 through 8. There were no objections to the Government's exhibits, and they were admitted into evidence. Applicant testified and did not offer any documentary evidence. The record remained opened until November 1, 2022, to permit Applicant an opportunity to provide documents. She provided documents that were marked Applicant Exhibits (AE) A through I. Hearing Exhibit I is the Government's response indicating there were no objections to the exhibits. They were admitted into evidence and the record closed. DOHA received the hearing transcript on October 27, 2022.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c. She denied the allegations in SOR ¶¶ 1.d through 1.g. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. She married in 2001 and has children ages 22, 14 and 9. She earned a bachelor's degree in 2005. She started her current job for a federal contractor in September 2020. She was unemployed from June 2008 to August 2008, January 2013 to April 2014, and May 2017 to June 2017. She also experienced periods of underemployment. In June 2017, her annual salary was approximately \$70,000 to \$80,000 and it increased incrementally. She now earns \$128,000 since starting her new job in 2020. Her husband is self-employed and earns about \$50,000. (Transcript (Tr.) 15-20; GE 1)

In February 2007, Applicant and her husband filed Chapter 13 bankruptcy. It was dismissed in August 2011. She and her husband filed jointly because they did not want to lose their house and car. They took the mandatory credit-counseling course required for filing bankruptcy. She explained that in 2007 her husband's job was the main source of income. She was working at a restaurant in 2007 and stopped in May 2008 because her daughter was born in June. She started a new job in August 2008 and worked until January 2013. She earned about \$21,000 annually. (Tr. 21-24, 39-43)

The required monthly bankruptcy payments were withdrawn from her husband's pay. They were to pay \$84 a month for four months and then \$450 a month for 56 months. The case was pending for 57 months and the number of months from filing to her last payment was 52 months. She testified that they missed eight payments. They were notified in January 2011 that they were on probation for six months beginning in February 2011 to make all of their payments or the bankruptcy would be dismissed. She did not check her husband's pay stub to ensure the payments were being made. The bankruptcy was dismissed in August 2011 for failure to make all of the required payments. She stated that she was unaware at the time that the bankruptcy was dismissed. Their home was eventually foreclosed. (Tr. 21-24, 35, 41-50; GE 6)

In November 2011, Applicant filed Chapter 13 bankruptcy separately. She was separated from her husband at the time and was taking care of her own finances. They

have reconciled, but she continued to keep their finances separate. She said she wanted to file bankruptcy again because she wanted to clear up all of the financial issues that remained from the 2007 bankruptcy. She admitted she was having difficulty paying her bills because she was trying to take care of her children on a limited income. She took the mandatory credit counseling again required to file bankruptcy. Her monthly payments were \$90 for 60 months. (Tr. 22-24, 50-52)

Applicant's car stopped working and her lawyer told her to surrender it to the lienholder. She did not understand that she was still required to make the bankruptcy payments. She said the car was the only remaining secured debt on the bankruptcy. She said the amount remaining that she owed for the car was \$2,200. She had \$65,000 of unsecured debts. She believed that by surrendering the car it resolved that debt and the bankruptcy was completed. She did not think she had to make any other bankruptcy payments. She said she confirmed this with her lawyer. She then got a letter from her lawyer telling her that her bankruptcy was dismissed, and she could not make up the missed payments. She had made 53 payments. She did not find out until 2017 that the bankruptcy was dismissed in June 2016 and her debts were not discharged. Applicant testified that her lawyer explained the difference between a discharge and dismissal in bankruptcy. She said she then realized that she needed her debts to be discharged to move on and start over. (Tr. 22-25, 44, 53-73)

Applicant said from June 2016 to May 2017, she paid her monthly bills and tried not to accumulate new debts. She tried to pay some small bills, but could not afford to pay any of the larger ones. She was living separately from her husband and was receiving minimal support for the children. In June 2017, she started a new job and earned between \$70,000 and \$80,000 annually. (Tr. 52-53, 77-80)

Applicant filed Chapter 13 bankruptcy again in May 2017. She had the same attorney for the three times she filed bankruptcy. She explained that she decided to file bankruptcy again because she wanted to have a free and clear discharge of her debts. She wanted a record to show she was trying to complete her bankruptcy and have her debts discharged. She listed her assets as \$20,856 and her liabilities as \$106,959. She explained the bulk of her liabilities were student loans (approximately \$83,000 is student loans). She testified that her bankruptcy payments were sent to her attorney, and she was making timely payments and owed one final payment of \$128. She had moved residences and her lawyer did not have her new address and did not contact her about the last payment. She missed the last payment, and it was too late to have her debts discharged. She did not want to file a Chapter 7 bankruptcy. The Chapter 13 bankruptcy was dismissed in March 2020. Based on Applicant's testimony it is obvious she was confused about the bankruptcy process as many of the debts she wanted to clear up through bankruptcy were likely barred by the statute of limitations when she filed in May 2017. She believed she was doing the right thing by filing bankruptcy. (Tr. 22-25, 68-75, 80-83)

The SOR alleged four delinquent debts (SOR ¶¶ 1.d - \$10,738; 1.e - \$965; 1.f - \$617; and 1.g - \$403). Applicant denied the debt in SOR ¶ 1.d because it was no longer

owed to the original creditor. She thought it was a student loan that she had paid. She said she had a payment agreement with the collection company to settle the debt. She completed the settlement and resolved the debt in January 2022. She provided documentation to show it is resolved. (Tr. 25-26, 85-99; GE 8; AE F)

Applicant made payment arrangements in October 2021 to settle the delinquent debt alleged in SOR ¶ 1.e. She affirmed that her contact with the creditor was after the SOR was issued and it prompted her to take action. This debt was for equipment that she had not been returned to her cable company. She paid the settlement and resolved the debt in October 2021. She provided a document showing the debt is resolved. (Tr. 27-28, 99-102; AE G)

Applicant explained that the debt in SOR ¶ 1.f was for a payday loan from about 2017. She was unable to pay it at the time because she did not have the money. After receipt of the SOR, she made a payment arrangement with the creditor. The debt had been transferred to a new collection company. She provided a document to show the debt was resolved. (Tr. 28-30, 103-107; AE D)

Applicant made payment arrangements to settle the debt in SOR ¶ 1.g. She made the required payments and settled the debt in December 2021. She provided a document to show the debt is resolved. (Tr. 31, 33-34, 107-109; AE H)

Applicant currently has \$83,087 of student loans that are deferred under the current government program. She has made an arrangement with the student loan creditor to begin making monthly payments in November 2022 to resolve the debt. She has two credit cards with minimal balances that are current. She spoke with a financial counselor on how to manage her finances. Applicant said she never learned how to manage her finances, and she is trying to be fiscally responsible. Her husband handled the finances until she took responsibility for her own in 2011. She pays the bulk of the household bills. She was trying to be responsible when she chose to file Chapter 13 bankruptcy. She was trying to take care of her children and pay her bills. She is the primary person responsible for paying the bills. She is current with paying her bills. She does not ask about her husband's finances. She does not rely on her husband for financial support, even though they live together. She makes sure that she and her daughter are taken care of. She takes full responsibility for her financial issues. Applicant and her husband took a trip to Jamaica in 2021. (Tr. 32, 85-95, 109-128)

The debts listed in her bankruptcy filings include a significant number of medical debts, utilities, and rent. There are also loans and other consumer debts. Her most recent credit report does not report the debts from her bankruptcy or new debts other than what was alleged in the SOR. (GE 6, 8)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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 filed Chapter 13 bankruptcy three times from 2007 to 2017 and each was dismissed. She also had four debts alleged in the SOR that became delinquent and were unpaid. 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:

(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.

Applicant was underemployed and unemployed at different times from 2007 through 2017 and was unable to meet her financial obligations. She and her husband filed Chapter 13 bankruptcy in 2007 and made the payments before it was dismissed in August 2011 when they missed some payments. She filed Chapter 13 bankruptcy separately from her husband in November 2011 and made most of the payments. She was confused when she returned her car to the lienholder believing this satisfied the terms of the bankruptcy. Applicant was also confused about the difference between dismissal and discharge in bankruptcy. When she learned her debts were not discharged, she filed Chapter 13 again in 2017 so that the debts could be discharged. The payments went to her attorney and she missed the last payment when she moved and was not notified by her attorney. The unsecured debts that were included in her bankruptcies are no longer on her current credit reports. After receiving the SOR, she resolved the four debts alleged in the SOR.

AG ¶ 20(a) does not apply because Applicant's financial difficulties were recent and not infrequent. She was unemployed and underemployed for periods of time, which resulted in her inability to meet her financial obligations, and was beyond her control. She did not ignore her financial responsibility, but rather filed Chapter 13 bankruptcy and made payments. I believe Applicant's unfamiliarity, misunderstanding, and confusion about the bankruptcy process caused her additional problems. She and her husband keep their finances separate and she is responsible for paying the bulk of their expenses. She has made Chapter 13 payments for 136 months, repeatedly trying to have her debts discharged so she can start with a clean financial slate. I am not convinced that she received the best legal advice to repeatedly file Chapter 13 and explanations as to her payment obligations. It was obvious that Applicant did not understand the different processes of the bankruptcy proceedings. I believe she was trying to act responsibly, despite the bankruptcy dismissals. AG ¶ 20(b) applies.

Applicant has received the mandatory financial counseling required to file bankruptcy and she recently sought additional financial counseling. She does not have any current delinquent debts. Her financial problems are under control. AG ¶ 20(c) applies. Applicant paid the four delinquent debts alleged, albeit after she received the SOR. AG ¶ 20(d) applies.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is presently employed in a well-paying job. Her bills are being paid timely. Although she was never taught how to manage her finances, she is trying to learn. She made bankruptcy payments for years in the hope that her actions were going to resolve her past financial issues and her debts would be discharged. She did not ignore her responsibilities, and I believe she was trying to do the right thing. She understands that she must be diligent in ensuring she continues to pay all of her bills timely, not accumulate new delinquent debts, and make student loan payments in accordance with her payment arrangements, or her security clearance could be in jeopardy. In my whole-person assessment, I have considered all of her past financial issues, the fact that many of the debts that were included in her bankruptcy were not paid and are likely barred by the statute of limitations. I believe that now that she has a financial clean slate and significant income, she will be diligent in acting fiscally responsible. Applicant's finances are not perfect and she is taking responsibility for paying the household bills on her own without relying on significant financial contributions from her husband. There is sufficient evidence

to conclude her past financial issues are not a security concern. Applicant has mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge