



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



In the matter of:)
)
) ISCR Case No. 20-00294
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

10/17/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 5, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on November 1, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 3, 2022.

The hearing was convened as scheduled on September 23, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. The record was held open for Applicant to submit additional information. She submitted an email and documents that I have marked AE K through X and admitted without objection.

Findings of Fact

Applicant is a 66-year-old employee of a defense contractor. She has worked for her current employer since December 2015. She seeks to retain a security clearance, which she has held most recently since about 2016. She has a bachelor's degree earned in 1978, a master's degree earned in 1985, and a Ph.D. earned in 1989. She has never married, and she has no children. (Tr. at 24; GE 1, 5; AE B)

The SOR alleges six delinquent debts totaling about \$26,787. The debts are established through credit reports and Applicant's admissions.

A number of events contributed to Applicant's financial problems. She paid \$10,000 to help her mother move in 2002. In about 2004, her employer closed its branch in her geographic location. She bought into a franchise that ultimately failed, costing her thousands of dollars. In 2006, her mother had a series of strokes, and Applicant paid to move her to a state where she had family. Pipes burst during the winter of 2013, causing expenses not covered by insurance. She had to pay deductibles and other costs for a surgery in 2015. In 2017, a drunk driver drove a truck through her fence and into her pool. Insurance did not pay for all of the repairs. She had surgery in 2018 that was not covered by insurance. She had to pay the deductibles for a surgery in 2019 and follow-up appointments in 2020. In 2019, she had expenses related to a cracked water pipe, a leaking faucet, and overhanging tree limbs. In 2021, a water pipe broke. Insurance paid for the damages, but she had to pay the deductible. She had to pay for the repairs to her pool after a snowstorm in 2022. (AE H, N, P, V, W, X)

Applicant lived in State A from 2007 to 2012, and State B from 2012 to 2015. She moved to State C in 2015 to accept her current job. She was making mortgage payments on houses in States A and B. She was paying to fix the house in State A so that she could sell it, and she was also making repairs to the house in State B. She was unable to maintain payment on all of her bills, and several debts became delinquent. (Tr. at 34-35; GE 1; AE M, P)

Applicant has owned a part-time jewelry business for about ten years. She sells her products at gem and jewelry trade shows, which can involve travel to other states. She bought a camper in about 2014 for about \$20,000 to \$25,000. She planned to use the camper to travel to trade shows and stay in the camper. She paid for the camper with cash and a charge to a credit card for about \$13,000. She stopped paying the credit card in about 2017. SOR ¶ 1.c alleges the \$13,896 balance on that debt. During her September 2019 background interview, Applicant stated that she was attempting to sell the camper and would put the proceeds toward this debt. She sold the camper for \$5,000 this year. She used the proceeds from the sale to pay some bills, but not this debt. (Tr. at 28-29, 32-34, 37-38; Applicant's response to SOR; GE 2-5; AE M)

Applicant purchased a timeshare for campgrounds at the same time she bought the camper. She felt that she could park the camper at various campgrounds when she traveled for trade shows. She stated that she stopped making payments because she was misled about the benefits from the timeshare and she was told that she could sell it

at any time, but she could not. SOR ¶ 1.b alleges the \$3,986 balance on the financing for the timeshare. (Tr. at 42-45; Applicant's response to SOR; GE 2, 3, 5)

Applicant purchased a water filtration system for her current home for about \$6,400 or \$6,500 in about 2017. The sales pitch was that the savings from the system would equal the monthly payments on the financing for the system. The savings did not add up to the monthly payments. In addition, the system took salt, which was another expense. Applicant felt that she was misled, and she stopped making payments. She admitted that the local water is "not that great," and it has "a rather bad smell to it," so her water is better with the system. SOR ¶ 1.a alleges the \$6,490 balance due on the financing on the system. The creditor placed a lien on Applicant's home for the loan. She cannot refinance the mortgage or sell the home unless she pays the debt. (Tr. at 39-42; Applicant's response to SOR; GE 2, 5; AE M)

Applicant asserted that she paid the \$748; \$1,583; and \$84 debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f. The \$748 and \$1,583 debts are listed on the August 2020 Experian credit report and the August 2021 Equifax credit report. They are not listed on any of the credit reports obtained from the three credit reporting agencies in October 2022. They were not dropped from the reports because of age, as the debts were less than seven years old. She paid the \$84 debt in April 2021. (Tr. at 45-46; GE 2-4; AE S-U)

Applicant stated that she receives minimal income from her jewelry business, but it provides her some tax benefits. She is a part-time consultant for a food company. She earns about \$17 an hour and works about four or five hours a week. She receives a discount on the company's food products, which helps with her expenses. She has about \$88,300 in a retirement account. (Tr. at 29-30; AE G, H, R)

Applicant sold the houses in States A and B in 2016. She broke even on the house in State A. She made about \$20,000 on the sale of the house in State B, which she used as a down payment on her current house in State C. (Tr. at 36-37)

Applicant plans to refinance the mortgage on her home and use the equity to pay her delinquent debts. She is unable to refinance at this time because her credit score is too low. She is working to improve the score. Except for the unpaid debts, her finances have improved. She earns a good salary. She is working with an investment broker to build her retirement. She works whatever overtime is available. She has learned how to service the pool herself. She lives a frugal lifestyle. She has a budget with an estimated \$450 left over at the end of the month. The budget did not reflect any payments toward her delinquent debts. Potential upcoming expenses include straightening her teeth, repairing issues from previous surgery, repairs and improvements to her home and pool (including new roof, windows, dishwasher, and air purifier; and repairs to sewer pipe, irrigation system, and deck), and a new car. (Tr. at 21-22, 47; AE A, D, F, J, L, Q, S-U, X)

Applicant submitted documents attesting to her excellent job performance and moral character. She is praised for her kindness, intelligence, courage, work ethic, professionalism, knowledge, expertise, and honesty. (AE C, E)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 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 Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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.

Section 7 of EO 10865 provides that adverse 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 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.

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 problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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, 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.

A number of events beyond Applicant's control contributed to her financial problems. Some of the events, while beyond her control, are costs associated with home ownership. AG ¶ 20(b) also requires that "the individual acted responsibly under the circumstances."

Applicant is credited with resolving three debts totaling \$2,415. Those debts are mitigated. She has done nothing to resolve the remaining three debts, which total about \$24,300. She told an investigator in September 2019 that she was attempting to sell the camper and would put the proceeds toward the \$13,896 debt. She sold the camper for \$5,000 this year. She used the proceeds from the sale to pay some bills, but not the debt associated with the camper. Her plan is to refinance her mortgage loan and use the equity in her property to pay her delinquent debts. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant has an extensive list of potential upcoming expenses. That list includes straightening her teeth, repairing issues from previous surgery, repairs and improvements to her home and pool (including new roof, windows, dishwasher, and air purifier; and repairs to sewer pipe, irrigation system, and deck), and a new car. That list, in conjunction with Applicant's heretofore disregard of her debts, leaves me with doubts that the debts will ever be paid.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant

Conclusion

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge