



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 20-02933
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esquire, Department Counsel
For Applicant: Brittany Forrester, Esq.

11/14/2022

Decision

HOGAN, Erin C., Administrative Judge:

On January 21, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct, and 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On May 26, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 7, 2022. The case was transferred to me on June 14, 2022. A Notice of Hearing was issued on August 3, 2022, scheduling a video-teleconference hearing on September 27, 2022. The hearing was held as scheduled. During the hearing, the Government offered six exhibits, which were admitted as Government Exhibits (Gov) 1 – 6. Applicant offered 11 exhibits, which were admitted as Applicant Exhibits (AE) A- K. The transcript (Tr.) was received on October 5, 2022. The record was held open until October 26, 2022, to allow Applicant to submit additional documents. Applicant timely

submitted nine documents, which were admitted without objection as AE L – AE T. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Some details in this decision were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Procedural Issue

At the beginning of the hearing, Department Counsel withdrew the allegation in SOR ¶ 2.a. As a result, the issue raised under Personal Conduct is dismissed. (Tr. 7)

Findings of Fact

Applicant is a 31-year-old employee of a Department of Defense contractor seeking a security clearance. She has worked full-time for her current employer since June 2020. She has worked as a Department of Defense contractor and has held a security clearance since 2016. Applicant is a high school graduate and earned an Information Technology Fundamentals certification and a Microsoft Specialist certification. She is single and has no children. (Tr.17-18; Gov 1; AE G, AE H)

Guideline F, Financial Considerations:

On October 29, 2018, Applicant submitted a security clearance questionnaire. A subsequent security clearance background investigation revealed Applicant had the following delinquent debts: a \$13,098 charged-off debt as a result of a voluntary car repossession (SOR ¶ 1.a: Gov 3 at 3; Gov 4 at 1; Gov 5 at 3; Gov 6 at 5); a \$7,807 delinquent medical account owed to an unidentified medical creditor (SOR ¶ 1.b: Gov 4 at 2; Gov 5 at 5); a \$1,286 delinquent medical account (SOR ¶ 1.c: Gov 4 at 2; Gov 5 at 5 ?); a \$749 delinquent medical account (SOR ¶ 1.d: Gov 4 at 2; Gov 5 at 5); a \$609 delinquent account that was placed for collection (SOR ¶ 1.e: Gov 4 at 2; Gov 5 at 5); a \$596 delinquent medical account (SOR ¶ 1.f: Gov 4 at 2); and a \$575 delinquent account that was placed for collection (SOR ¶ 1.g: Gov 4 at 2).

The SOR also alleged that Applicant failed to file her Federal income tax returns for tax year 2017 (SOR ¶ 1.h); failed to file her State A income tax returns for tax year 2017 (SOR ¶1.i); and failed to file her State B income tax returns for tax year 2017 (SOR ¶1.j). (Gov 2 at 4, 7)

Applicant faced many personal and financial issues in 2017. Her grandmother and uncle became seriously ill. Her father passed away during the same time-period. Her grandmother and uncle soon passed away after her father's death. Applicant provided support to all three individuals. She had to pay for her father's funeral expenses. She was also figuring out how to pay for her grandmother and uncle's funeral expenses as well as their unpaid medical expenses. She was also going through a

hostile break-up with a long-time boyfriend. It was tough, but Applicant says she had to be strong in order to take care of her family. (Tr. 27-28, 35-36; AE K)

Applicant claims she provided all of her paperwork for her 2017 federal and state income taxes to a tax professional. She was unaware that she was required to file state income tax returns for both State A and State B. She was required to do this because she lived part of the year in State A and part of the year in State B. When she discovered this was an issue, Applicant attempted to resolve the situation. She filed her Federal and state tax returns in 2019. During the hearing, Applicant apologized and said her failure to file her 2017 income tax returns was not intentional. (Tr. 27-28, 61-67; AE A)

The status of the debts alleged in the SOR are:

SOR ¶ 1.a: \$13,098 charged-off automobile debt: Applicant was in a car accident. She believed the insurance company would pay for the damages. The insurance company declined coverage. Applicant recently entered into a payment plan. Her first payment was \$153. The monthly payments will eventually increase to \$220. She is required to pay \$5,500 to settle the account. She provided proof of her first payment. (Tr. 19-21, 50; AE B)

SOR ¶ 1.b: \$7,807 delinquent medical debt: Applicant had difficulty locating this medical account. The SOR is not specific in its pleading. Applicant believed it was related to being treated for a miscarriage. After the hearing, Applicant called around to all of the hospitals in the metropolitan area where she believed she had treatment over the past several years. Hospital A indicated that her balance is zero. However, they did not provide the treatment, which is the basis of this debt. Hospital B confirmed the debt. However, the debt is too old to collect. The debt is uncollectable. (Tr. 22, 51-53; HE IV, Brittany Forrester e-mail, dated October 26, 2022)

SOR ¶ 1.c: \$1,286 delinquent medical account: Applicant had difficulty locating this account because the SOR pleading is too broad and vague. Applicant believed this debt was paid. After the hearing, she provided proof that she paid her medical debt to Hospital A. Due to the vagueness of the SOR allegation, it is not clear that this is related to the debt alleged in the SOR. The medical account no longer appears on her credit report. Applicant provided sufficient evidence to show the account was resolved. (Tr. 22-24, 57; AE N - O)

SOR ¶ 1.d: \$749 delinquent medical account: Applicant had difficulty locating this account because the SOR pleading is too broad and vague. Applicant believed this debt was paid. After the hearing, she provided proof that she paid her medical debt to Hospital A. The medical account no longer appears on her credit report. Applicant provided sufficient evidence to show the account was resolved. (Tr. 22-24, 57; AE N - O)

SOR ¶ 1.e: \$609 delinquent debt placed for collection: Applicant paid off this debt on April 7, 2021. (Tr. 25, 58; AE P)

SOR ¶ 1.f: \$596 delinquent medical account: Applicant had difficulty locating this account because the SOR pleading is too broad and vague. Applicant believed this debt was paid. After the hearing, she provided proof that she paid her medical debt to Hospital A. The medical account no longer appears on her credit report. Applicant provided sufficient evidence to show the account was resolved. (Tr. 22-24, 58; AE N - O)

SOR ¶ 1.g: \$575 delinquent debt placed for collection: Applicant paid off this debt on April 7, 2021. (Tr. 27, 58; AE L)

SOR ¶ 1.h: Failed to file Federal income tax returns for tax year 2017: Applicant filed her 2017 Federal income tax returns in 2019. She was entitled a refund of \$853 and did not owe a balance. (AE A)

SOR ¶ 1.i: Failed to file State A income tax returns for tax year 2017: Applicant understood that she was not required to file an income tax return in State A because she resided in State B. She claims the person who filed her tax returns made a mistake. Once she learned of the issue, Applicant contacted State A and was told that she does not owe a balance to State A. (Tr. 28-29)

SOR ¶ 1.j: Failed to file State B income tax returns for tax year 2017: Applicant claims she filed her 2017 State B income tax return. She testified she contacted State B, who informed her she owes approximately \$3,000. She set up a payment plan with State B. The first payment was due on October 15th. She agreed to pay \$196.82 per month over a period of 20 months. The payments are directly via an allotment from her paycheck. The tax debt is being resolved. (Tr. 29; AE C)

In 2017, Applicant's annual income was approximately \$55,000. Her annual income is currently \$75,000. She testified that she had nothing in collection. She is working on improving her credit. She wants to speak with a credit counselor. Her goal is to buy a house. She believes she is able to satisfy her remaining debts. For the past two years, she has rented an apartment with a roommate. Her roommate had some periods of unemployment so Applicant occasionally paid her share of the rent. Her roommate is currently employed, and is able to pay her share of the monthly rent of \$1,488. Applicant pays for cable, food and housing. To earn extra income, Applicant occasionally works as a driver for a rideshare company. This brings in an extra \$200. (Tr. 31-32, 38-41, 48)

Applicant's monthly net income is approximately \$4,200. Her share of the rent is \$750. Her car payment is \$917, and \$626 for the automobile debt alleged in SOR ¶ 1.a. Groceries cost \$400 and utilities cost \$108. She testified she has approximately, \$1,000 left over each month after expenses. She has \$2,000 set aside for emergencies. She occasionally supports her mother and her aunt. For example, she paid her aunt's

monthly car payment of \$169 for a year when her aunt was unemployed. She has not made any large expenditures within the past few years. (Tr. 41-49)

Under cross-examination, Applicant admitted to getting behind on one credit card payment and on her car note as indicated on the most recent credit report dated, September 22, 2022. She testified that she needed to pay her attorney fees for this DOHA proceeding. Her explanation is that she needed to apply the money towards a lawyer to represent her so she could save her livelihood. Her car note now has automatic payments and she is working on catching up on her payments. (Tr. 59-61; Gov 6 at 3, 4). The two debts discussed in this paragraph were not alleged in the SOR. As such, they will not be considered under matters of disqualification. They will be considered under matters of extenuation and mitigation.

Whole-Person Factors

Several of Applicant's friends and colleagues wrote statements on her behalf. Ms. A. worked with Applicant when Applicant was an intern at her company. She took an interest in Applicant because she showed up for work on time, dressed for success, and gave it 100%. She describes Applicant as "a go-getter in spades." She watched Applicant face many challenges, but did not let obstacles stand in her way. She has watched her grow professionally and can attest to her character, skills, drive, and ability to succeed. (AE E at 1).

Ms. B. is a friend of Applicant. When she moved into the area, Applicant allowed her to live with her until she found another place to live. She describes Applicant as caring, loving, considerate and sweet. Applicant is successful in her work and dedicated to her family and friends. (AE E at 2)

Ms. C. has known Applicant for over 10 years. She describes herself as a former co-worker and mentor. They became friends outside the workplace. She describes Applicant as "an intelligent and responsible human being of amazing character." Applicant has a great deal of integrity and always does the right thing. (AE E at 3)

Ms. D. has been friends with Applicant since high school. They became friends after Applicant voluntarily took on the responsibility of walking Ms. D.'s autistic brother home from the school bus stop after school. Applicant is always there to listen and to help her find solutions to her problems. In the Fall 2021, Applicant tutored Ms. D. in math which helped her pass a college math course. Applicant has always worked hard. She describes Applicant as "selfless, diplomatic, and extremely warm-hearted." (AE E at 4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are useful 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(a), 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 access 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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 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 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).

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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ 19(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state or local income tax as required.

Applicant has a history of financial problems. The SOR alleges an automobile debt, two consumer debts, and four medical debts. Applicant also failed to file her state and federal income tax returns in 2017. AG ¶¶ 19(a), 19(c), and AG 19(f) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in her obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's case:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(b) applies. Applicant suffered several medical complications resulting in unplanned medical bills. In 2017, Applicant's father, grandmother, and uncle became ill and passed away. She contributed to their care and paid her father's funeral expenses. The automobile debt alleged in SOR ¶ 1.a, was also a circumstance beyond her control. Her car was totaled in an accident. She thought the insurance company would pay the debt. They denied the claim. Applicant is doing the best she can under the circumstances.

AG ¶ 20(d) applies. Applicant made a good-faith effort to resolve her delinquent debts. Applicant resolved the debts alleged in SOR ¶¶ 1.e and 1.g. She entered into payments plans for the automobile debt alleged in SOR ¶ 1.a and the state tax debt alleged in SOR ¶ 1.j.

Applicant provided sufficient evidence to show that she was paying the delinquent medical debts. While the SOR pleading was so vague that Applicant could not identify the name of the creditor, she took it upon herself to contact every medical facility where she received treatment. She discovered no collectable medical debts. There are no delinquent medical debts listed in the most recent credit report, obtained in September 2022.

AG ¶ 20(g) applies because Applicant filed all of her 2017 state and federal income tax returns in 2019. She received a refund from the federal government and owed no money to State A. She entered into a repayment plan with State B.

While the September 2022 credit report listed two new delinquent debts, Applicant's explanation that she prioritized paying her lawyer to represent her in the security clearance proceeding is understandable. She intends to pay the delinquency as soon as she can. She currently lives within her means. She is making every effort that

is within her control to resolve her accounts. Applicant mitigated the security concerns raised under Financial Considerations.

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.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what she needs to do to establish and maintain her financial responsibility. Her efforts at debt resolution have established a “meaningful track record” of debt re-payment. I am confident she will continue to work to achieve financial stability.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant’s past financial issues as well as her efforts towards resolving her delinquent debt. She addressed and is addressing the delinquent debts that she was able to resolve. While Applicant’s financial situation is not perfect, she has taken steps to improve her financial situation. Her income has increased and she occasionally works part time to supplement her income. Several of Applicant’s debts were caused by circumstances beyond her control. She has taken significant steps to resolve her delinquent debt and has a plan in place to continue to resolve her debts. For these reasons, security concerns raised under the Financial Considerations Guideline are mitigated.

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.j:	For Applicant
Paragraph 2, Guideline F:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge