



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



In the matter of:)
)
) ISCR Case No. 22-00457
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

11/18/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant mitigated financial considerations security concerns arising from her delinquent debts. She has been making regular payments towards resolving her delinquent debts, through a debt consolidation firm, for several years. Her debts are being resolved and are under control. Applicant’s continued eligibility for access to classified information is granted.

Statement of the Case

On March 21, 2022, the Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. (Item 1) The DOD CAF issued the SOR under Executive Order 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 18, 2022, and elected to have her case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, instead of a hearing. (Item 2) With her SOR response, she also provided several documents, which I have identified as Answer Attachments A through F.

On June 30, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 8. DOHA mailed the FORM to Applicant on July 12, 2022, and she received it on July 18, 2022.

On August 12, 2022, Applicant e-mailed DOHA and provided a response to the FORM (FORM Response), along with three Enclosures. (Applicant Enclosures (AE) 1, 2, and 3) Her August 12, 2022 correspondence continued an e-mail chain that included an April 18, 2022 e-mail to DOHA in which Applicant provided a two-paragraph narrative statement. (Item 1A) She did not note any objections to the Government's FORM Items.

The case was assigned to me on October 3, 2022, for a decision on the written record. On October 28, 2022, I e-mailed the parties and indicated that, having reviewed the record in the case, I was re-opening the record to allow Applicant the opportunity to submit additional evidence, with a deadline of November 14, 2022. (Hearing Exhibit (HE) 1). She made a timely submission providing two recommendation letters, documentation relating to her debt payments, and a monthly budget. Those documents are marked as AE 3 through 7.

FORM Items 1 and 2 are the pleadings in the case. FORM Items 2 through 8 are admitted without objection as Government exhibits. SOR Answer Attachments A through F, FORM Response 1A, and FORM Response Documents AE 1 through 7 are all admitted without objection as Applicant exhibits. The record closed on November 14, 2022.

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a through 1.f, and denied SOR ¶ 1.g as a duplicate debt. Her admissions are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

As discussed below, this case resulted from a 2021 credit report of Applicant's that was noted through the DOD's Continuous Evaluation Program. Applicant's biographical information is largely taken from her July 2016 security clearance application (SCA), as no later SCA is available. She is 39 years old. She has never married and she has no children. She graduated from high school in 2000. She earned an associate degree in 2004 and a bachelor's degree in 2013. She has worked as a cleared federal contractor since August 2006, and for her current employer and clearance sponsor since October 2008. She works as an executive assistant. Since December 2015, she has also worked part-time as a receptionist at a salon. (Item 3; AE 4)

Applicant's 2016 background investigation (July 2016 SCA, September 2016 credit report, and August 2017 interview) indicated no delinquencies. (Items 3, 4, 8) The SOR is based on credit reports from January 2021 and March 2022, which list delinquent accounts totaling about \$54,000. (Items 5, 6, 7)

The SOR concerns seven alleged delinquent debts, totaling about \$47,787. (One debt is alleged twice, so the more accurate amount is about \$42,000). All of the accounts are consumer credit accounts that have been charged off. This includes SOR ¶¶ 1.a (\$16,082), 1.b (\$5,648), 1.c (\$7,703), 1.d (\$9,809), 1.e (\$1,627), and 1.f (\$1,270). SOR ¶ 1.g (\$5,648) is a duplicate of SOR ¶ 1.b, as it is for the same amount, and owed to the same creditor. (Items 5, 6, 7)

With her answer to the SOR, Applicant provided an agreement with a debt relief company (DRC) she engaged in April 2019. She was to pay \$1,000 a month to the DRC for resolution and settlement of her debts. She enrolled 13 creditors, with almost \$65,000 in combined debt. All of the SOR debts are included in the agreement. (Answer Att. F and Exhibit A thereto)

As of April 2022, when Applicant answered the SOR, she had resolved all but three of the debts through the debt relief program. (Answer Att. A) Applicant also provided several IRS 1099-C Forms reflecting the cancellation of several other debts in 2021. These cancellations totaled about \$12,470. (Answer Att. B, C, D, and E).

Little is known about the origin of the debts, but Applicant noted in FORM Response that, "In early 2019, I realized that making the minimum payments on my credit cards and unsecured loans would not be the best way of paying off my debt." (Item 1A). Through the DRC program, she has made regular \$500 payments twice a month since May 2019, except the month of October 2020, when she changed jobs. (FORM Response, Item 1A) She documented numerous bi-monthly recurring deposits from her checking account from May 2019 through July 2022. (FORM Response Enclosure 2)

As of July 2022, nine of the 13 accounts in the DRC debt relief program had been paid off (including SOR ¶¶ 1.e and 1.f), three were in the process of repayment (SOR ¶¶ 1.b, 1.c, and 1.d), and one (SOR ¶ 1.a, the largest debt) was in the process of being negotiated. Applicant expects to complete the payment and fully resolve her debts in May 2024. (FORM Response Enclosure 1; FORM Response Item 1A)

Applicant noted the status of the various accounts enrolled in the DRC debt relief program in margin notes in FORM Response Enclosure 1. Since that information was not independently verified, I reopened the record to allow her the opportunity to provide corroborating documentation. (HE 1)

In response, Applicant provided updated information in November 2022. SOR ¶ 1.b is under a settlement agreement for \$4,237. SOR ¶ 1.c is under a settlement agreement for \$2,559. SOR ¶ 1.d is under a settlement agreement for \$4,905. Each of these creditors receive monthly checks from the DRC and the payment plan for each debt

is on a defined timeframe. (AE 6) No new information was provided for SOR ¶ 1.a (\$16,082), beyond the prior indication that the debt was being negotiated by the DRC.

With her FORM Response, Applicant also had provided documentation that, as of July 2022, she had almost \$133,000 in her company IRA account (subject to market fluctuation). She has not used those funds to address her debts, given the taxes and penalties that would result from an early withdrawal, but they are available to her. She also noted that the DRC has provided financial education to her on better use of credit cards and loans to avoid large debt in the future. (FORM Response and Enclosure 3)

Applicant also provided a budget for November 2022. It shows \$5,644 in income (\$4,884 per month from her full-time job and \$760 per month from her part-time job at the salon) and \$4,091 in expenses, including her debt payments, credit card and loan payments, rent, and other regular monthly expenses (including insurance, utilities, entertainment, charitable gifts, and gas). (AE 7)

Applicant's supervisors at both of her jobs provided strong recommendations. Ms. H has known Applicant since Applicant was a teenager. She later worked her way through college, and later became Ms. H's executive assistant in a cleared DOD position. Applicant has her total confidence and Applicant has the discretion, decision-making, and ability to work well with others that is required for the job. Ms. H would trust Applicant with her life, secrets, possessions, and her family. (AE 4)

Applicant's supervisor at the salon also credited her professionalism, and noted that he entrusts her to handle cash and credit card transactions regularly, as well as sensitive client information. He has also entrusted her with caring for family pets in their home when they are on vacation. (AE 5)

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 the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 to classified information 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. Under Directive ¶ E3.1.15, 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant 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. . . .

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).

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 fell behind on her debts in early 2019, when she realized that making minimum payments on her loans and credit cards was insufficient to address them. Her debts are established by her admissions and by credit reports in the record, from 2021 and 2022. AG ¶¶ 19(a) and 19(c) apply.

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;

(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.

When Applicant realized she was falling behind in paying her credit cards and loans, she voluntarily entered into a debt repayment agreement with a debt consolidation company. She did so in April 2019, well before her clearance eligibility became an issue. She has been making regular, bimonthly payments towards her debts since May 2019. All of her debts, whether alleged in the SOR or otherwise, have either been paid or are being paid, with one exception – the largest debt remaining in the plan (SOR ¶ 1.a), and the DRC is negotiating with that creditor to arrange a settlement. She also has a reasonable budget that addresses her debts and expenses. Applicant's debts are not yet fully resolved, so AG ¶ 20(a) does not fully apply.

However, both AG ¶¶ 20(c) and 20(d) fully apply. As she notes in her answer to the SOR and in her FORM Response, Applicant initiated and is adhering to a good-faith effort to repay her overdue creditors and otherwise resolve her debts. She has also received financial counseling from the DRC about how to avoid financial issues in the future, and her debts are being resolved and are under control.

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(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. 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. Applicant provided sufficient evidence to mitigate the security concern shown by her delinquent debts. Overall, the record evidence leaves me without questions or doubts as to her continued eligibility for a security clearance.

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, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge