



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



In the matter of:)	
)	
)	ISCR Case No. 21-01791
)	
Applicant for Security Clearance)	

Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: Shawnielle Predeoux, Esq.

12/01/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant’s history of delinquent debt generated financial considerations security concerns that she failed to mitigate. Clearance is denied.

Statement of the Case

On August 10, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On September 3, 2021, Applicant answered the SOR, denying the allegations and requesting a hearing. The case was initially assigned to another judge on November 8,

2021, then re-assigned to me on May 18, 2022. On August 5, 2022, the Defense Office of Hearings and Appeals scheduled the hearing for August 31, 2022.

The hearing was held as scheduled. I considered Applicant's testimony, together with four Government exhibits, marked and incorporated into the record as Government Exhibit (GE) 1 through GE 4. At the end of the hearing, I left the record open at the request of Applicant's counsel to allow her to submit documents. Within the time allotted Applicant's counsel submitted 11 exhibits, that I marked and incorporated into the record, as AE A through AE K. The transcript (Tr.) was received on September 12, 2022.

Findings of Fact

Applicant is a 53-year-old married woman. She has been legally separated from her husband since 2017. (AE A) A previous marriage ended in divorce. She earned a bachelor's degree in business accounting in 2001, and she earned a master's degree in information systems management in 2005. (Tr. 23-24) Since earning her master's degree, she has worked for various contractors as an information technology security subject-matter expert. (Tr. 27). She has been with her current employer for the last three years. Applicant is a veteran of the U.S. Army National Guard, where she served from 1989 to 2001. She was discharged honorably. (Tr. 21)

Applicant is highly respected in the community and on the job. One friend described her as a person with a steadfast character and resolute demeanor. (AE B) Other friends characterize her as hard working (AE E), responsible, and honest. (AE G) Per her supervisor, she "is one of the most dedicated, hardworking, and innovative people with whom [he has] had the pleasure to work." (AE H)

Applicant has a history of financial problems. They began in the mid-2010s when her marriage began to deteriorate. By the time the government initiated the background investigation in January 2021, she had incurred approximately \$35,000 of delinquent debt, as alleged in the SOR. (GE 3)

The debt alleged in subparagraph 1.a, totaling approximately \$15,800, was initially owed to a credit card lender. It was subsequently transferred to a collection agent. Applicant clarified her SOR answer, testifying that she agreed that the debt was delinquent, but contested the amount overdue (Tr. 39). Applicant contacted the creditor, but was unable to settle the account because they requested a lump-sum which she was unable to afford. (Tr. 40-41) After the issuance of the SOR, she retained an attorney to help her settle this account, as well as her other debts. (Tr. 41-42) She provided no evidence of any progress made thus far.

The debt alleged in subparagraph 1.b, totaling approximately \$7,400, is another credit card balance. She contacted the credit card company, and was told the debt had been transferred to another lender. (Tr. 44) When she contacted the new debt holder, they proposed a payment plan that she could not afford. (Tr. 45-46)

The credit card debt alleged in subparagraph 1.c, totals approximately \$6,750. Applicant contends that she contacted this creditor and settled the account for \$3,000. (Tr.47) She provided no substantiating evidence.

The debt alleged in subparagraph 1.d is a credit card with a balance of \$5,443. Applicant last made a payment on this account in mid-2019. (Tr. 52) She recently contacted the creditor to arrange a payment plan. (Tr. 51)

The debt alleged in subparagraph 1.e, totaling \$96, is owed to a cable television company, allegedly for the balance on an account that had been closed. (Tr. 52, 54) Applicant contends that she “must have provided them with something” because they closed the account after their conversation. (Tr. 52-53) Applicant has no documentation that the account was closed. (Tr. 53)

The debt alleged in subparagraph 1.f, totaling \$277 is a gas station credit card. Applicant contends that she satisfied this debt through an electronic payment. (Tr. 55) It is listed as settled on a credit bureau report of February 2021. (GE 3 at 4)

Applicant contends that she satisfied multiple other delinquent debts, as her financial situation gradually stabilized after her legal separation. (Tr. 17, 41) She did not elaborate, nor provide any documentation. Also, she contends that the amounts owed to the creditors alleged in the SOR are lower the Government alleged. In addition, she contends that she lost many of her financial records when she relocated from the home she shared with her husband.

In August 2019, Applicant went on a two-week vacation to Europe, visiting three countries. (Tr. 71; GE 1 at 47-49) The trip cost approximately \$2,400. (Tr. 72)

In 2021, Applicant’s mother passed away. (Tr. 92) Applicant exhausted her savings, totaling approximately \$9,000, on burial expenses. (Tr. 19) She contends that the money she had to spend on her mother’s interment impeded her ability to make better progress resolving her delinquent debts. (Tr. 91)

Applicant earns \$182,000 annually. (Tr. 33) She has been earning more than \$100,000 per year since 2016. (Tr. 33) Applicant maintains a budget. (Tr. 85; AE J) She has \$1,000 of discretionary income remaining at the end of each month. She testified that she is using her discretionary income to make extra payments on her bills. (Tr. 85) She provided no evidence supporting this contention.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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. 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18) Applicant satisfied the debt alleged in SOR subparagraph 1.f. I resolve it in her favor.

The remaining delinquent debt, totaling approximately \$35,000, triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

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’s debts are still outstanding. Consequently, AG ¶ 20(a) is not applicable.

The period when Applicant incurred delinquent debt corresponded with the deterioration of her marriage and her ultimate separation from her husband. Her ability to satisfy them after they became delinquent was hampered by the costs she incurred after her mother passed away in 2021. Conversely, since Applicant’s marital separation, she has taken an overseas vacation to three countries. Moreover, she provided minimal evidence substantiating her contention that she has satisfied or begun satisfying the SOR debts. Similarly, her contention that she has satisfied debts that are unalleged in the SOR is not supported by the record evidence. Under these circumstances, I am unable to conclude that AG ¶ 20(b) applies.

Although Applicant now maintains a budget, it is unclear how long she has been adhering to it because she did not submit it until after I extended the record. Absent supporting evidence that she is adhering to a budget and paying down her debt, it remains unclear whether her financial problems are under control. Under these circumstances, none of the other mitigating conditions apply, and I conclude that Applicant has failed to mitigate the financial considerations security concerns.

Whole-Person Concept

I considered the whole-person concept in my analysis of the disqualifying and mitigating conditions and it does not warrant a favorable conclusion.

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.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge