



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



In the matter of:)
)
) ISCR Case No. 21-01168
)
)
Applicant for Security Clearance)

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

December 12, 2022

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 6, 2020. On October 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 effective within the Department of Defense after June 8, 2017. Applicant answered the SOR in writing (Answer) on October 15, 2021, with three documents attached. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on November 19, 2021. The case was initially assigned to another judge and then was reassigned to me on September 6, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on October 3, 2022. The case was heard on November 4, 2022, as scheduled.

The Government offered Government Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified on her own behalf. I marked, as Applicant Exhibits (AE) A through C, the three documents she attached to the Answer, which I also admitted without objection. I kept the record open until November 18, 2022, to give Applicant the opportunity to supplement the record after the hearing. She timely submitted four documents, which I marked as AE D through G. I also marked the related email correspondence as AE H. These documents are admitted without objection. DOHA received the transcript of the hearing on November 11, 2022. (Tr. at 10-17; 66-68.)

Findings of Fact

Applicant is 45 years old. She has worked as an engineer for her current employer, a U.S. Government contractor, since June 2022. She worked for other contractors for a number of years prior to her current employment. She enlisted in the Army Reserve in 2006 and was honorably discharged in 2014, with the pay grade of E-4. She deployed twice to war zones as a contractor. At the same time she also discharged her duties as a Reservist. She was granted eligibility for a Secret security clearance in 2006 and again in 2011. She is presently applying for eligibility for a Top Secret clearance. She has never married and has no children. (Tr. at 18-22, 26; GE 1 at 57-58; GE 2 at 25.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges that Applicant is ineligible for clearance because she is financially overextended with delinquent debts and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR identifies five debts in collection totaling about \$53,000. In her Answer, Applicant denied all of the SOR allegations and provided additional explanations regarding her understanding of the status of the debts. She also attached three credit reports, dated October 14, 2021. The existence and amounts of these debts is supported by the Government's credit reports in the record dated March 4, 2021; September 3, 2020; February 23, 2017; and September 20, 2022. (GE 4; GE 5; GE 6; GE 8; AE A through C.)

The background and current status of each of the debts alleged in the SOR are as follows:

1.a. Credit-card debt placed for collection in the approximate amount of \$577. Applicant opened this account in November 2010. She defaulted on the account in about 2015, and the creditor referred the account for collection. Applicant testified that she paid

this debt in 2015. She wrote in her October 2021 Answer that she called the creditor and was advised that it had no record of this account. The creditor advised Applicant to contact the credit bureau reporting the debt and to ask that the debt be removed from its report. In 2021 she submitted a dispute to have the debt removed because it had been paid. The Government's most recent credit report reflects that she opened a new credit-card account with this creditor in July 2018, and that the new account was current. The creditor's action of opening a new account in Applicant's name provides evidence that she paid the account alleged in SOR 1.a prior to 2018 and that the contrary credit bureau report is erroneous. This former debt was resolved many years ago. (Tr. at 28-29, 31-39; GE 3 at 8; GE 4 at 2; GE 5 at 4; GE 6 at 4.)

1.b. Government account for overpayment of educational benefits placed for collection in the approximate amount of \$81. Applicant testified that she has actually paid this debt several times in her attempts to have it removed from her credit report. In her Answer she provided evidence of an \$81 payment on August 17, 2021. She also provided a record of a February 2021 payment she made of a second debt owed to the Government in the amount of \$1,034. This larger payment was for a debt owed for an overpayment for housing that was not alleged in the SOR. Both the debt at SOR 1.b and the larger, unalleged debt to the Government are resolved. (Answer at 3; Tr. at 39-42, 58; GE 3 at 8; GE 4 at 2; GE 5 at 4; GE 7.)

1.c. Auto loan account charged off in the approximate amount of \$33,953. Applicant opened this account in October 2016 and defaulted on the account after February 2017. The creditor never repossessed the vehicle. Applicant states that she made repeated attempts to contact someone at the creditor's office who would help her return the vehicle and resolve this debt, but was unsuccessful. In 2021 Applicant hired a credit-repair company to address this debt. The creditor responded to the credit-repair company's correspondence that the debt was valid. She last spoke with someone at the creditor's office later in 2021 and asked for instructions on what to do. The creditor never called her back. About a month prior to the hearing, Applicant had the credit-repair company write the creditor stating that she wanted to work out a payment arrangement for this debt. The creditor never responded. The creditor had charged off the account and sold it to a collection agency. Applicant testified that she is prepared and able to pay at least \$1,000 per month to settle this debt and is committed to resolving this debt. After the hearing, Applicant entered into a repayment plan with the collection agency. Under the plan, she is obligated to pay \$2,000 by December 1, 2022, and \$998 per month for the following 34 months by automatic payments from her bank account. Applicant provided documentation evidencing her initial payment of \$2,000 on November 18, 2022. This debt is being resolved. (Tr. at 42-52, 59-64; GE 3 at 8; GE 4 at 2; GE 5 at 4; GE 6 at 4; GE 7; GE 8 at 5; AE A at 4; AE B at 5; AE C at 5; AE D at 5; AE E; AE F; AE G; AE H.)

1.d. Fitness club account placed for collection in the approximate amount of \$767. In 2018 Applicant canceled her new club membership after living for one month in the city where the club was located. She deployed to a war zone at that time. She paid the early cancellation fee to the club. She was unaware there were additional fees to be paid.

Shortly after her deployment she learned about the additional fees and paid the debt. The club assigned the debt to a collection agency about the same time. During her background interview in February 2021, she learned that the debt had not been deleted from her credit report, dated September 3, 2020. The debt was subsequently deleted. It does not appear in the more recent credit reports in the record. This former debt was resolved several years ago. This debt is resolved. (Tr. at 55-60; GE 3 at 8; GE 5 at 4.)

1.e. Auto loan account placed for collection in the approximate amount of \$17,368. Applicant opened this account in 2010. Applicant defaulted on the loan payments in about 2014, and the creditor placed the account for collection. She paid the debt off over five months, and by December 2014, she had finished paying this debt. The account appears in the Government's credit reports as "paid charge off" and as "current." The record contains no credit report that reflects that the account was delinquent. This former debt was resolved many years ago. (Tr. at 43, 45-46, 52-55; GE 3 at 8; GE 5 at 4; GE 6 at 4.)

Mitigation

Applicant explained that some of her oldest debts were the result of her decision to help her mother save her house from foreclosure and to assist her mother by making further mortgage payments. At a later point, Applicant helped her mother again by paying her medical bills. This caused Applicant to fall behind in paying some of her own debts. She also explained that in 2018, she made a bad investment that negatively affected her finances. She subsequently paid some of her debts and was surprised that the paid debts were not removed from her credit report. Presently Applicant has \$5,000 to \$6,000 in savings and earns a net monthly income of about \$7,000. She does not live beyond her ability to pay her bills. (Tr. at 25-27, 42-43, 52, 64-65.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The SOR alleges that Applicant owed approximately \$53,000 for the five alleged delinquent debts. The record evidence reflects that two of the debts alleged in the SOR were delinquent as of the date of the SOR (SOR 1.b and 1.c). The Government's credit reports establish the existence of these debts and the application of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate security concerns under Guideline F.

The guideline includes five conditions in AG ¶ 20 that could apply to the facts in this case and mitigate the security concerns arising from Applicant's financial difficulties:

- (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, or 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The record evidence demonstrates that Applicant has responsibly managed her delinquent debts resulting from her mother's financial situation, which caused Applicant to divert funds to help her mother avoid foreclosure on her home and later to pay her medical bills. Applicant has repaid four of her outstanding debts and has entered into a repayment agreement to fully repay her one remaining debt for a vehicle loan. Three of

those debts were, in fact, paid years prior to the issuance of the SOR. She has stabilized her financial condition with the help of her financial advisor. There are clear indications that her one remaining debt is being resolved. She substantially improved her financial condition by deploying twice to war zones where she earned substantial income with limited living expenses. Her past behavior does not cast doubt on her current reliability, trustworthiness, or good judgment. All of the above mitigating conditions have application under the facts of this case. Applicant has mitigated the Financial Considerations concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given significant weight to Applicant's service to the U.S. Government as a contractor twice deployed to war zones, and the sacrifices and dangers that her work required. Her evidence in mitigation establishes that she has made sincere efforts to repay her delinquent debts and to remove erroneous information from her credit record about debts that she paid in the past. Overall, the record evidence leaves me without questions or doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant

Conclusion

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

JOHN BAYARD GLENDON
Administrative Judge