



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



In the matter of:)
)
) ISCR Case No. 21-02344
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

December 2, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On October 25, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On October 28, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On November 15, 2021, Applicant submitted her Answer to the SOR, and requested a hearing.

On February 8, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On March 14, 2022, DOHA issued a notice scheduling the hearing for April 27, 2022. On April 22, 2022, DOHA issued an amended notice of

hearing rescheduling the hearing for April 28, 2022. I convened the hearing as rescheduled.

Department Counsel offered Government Exhibits (GE) 1 through 6, which I admitted without objection. Applicant testified, called one witness to testify on her behalf, and offered Applicant Exhibits (AE) A through L, which I admitted without objection. I held the record open until May 24, 2022, to afford Applicant an opportunity to submit additional evidence. She submitted an email that I marked as AE M and admitted without objection. On May 6, 2022, DOHA received the hearing transcript (Tr.).

Findings of Fact

Background Information

Applicant is a 57-year-old department specialist employed by a defense contractor since May 2008. She seeks to renew her Secret security clearance. Maintaining a clearance is a requirement of her continued employment. (Tr. 13-14)

Applicant received her high school diploma in June 1983. She later received a certificate for completing training as a dental assistant in 1984. (Tr. 15-16) She married in August 1986, and has three adult daughters. Applicant's husband is on disability and unable to work. Her oldest daughter is independent, her second daughter is in drug rehabilitation, and her third daughter lives at home and studying to become a registered nurse. Applicant provides complete financial support for her third daughter. (Tr. 16-18)

Financial Considerations

Applicant's 15 delinquent SOR debts totaling approximately \$33,832 and her 2011 Chapter 7 bankruptcy are established by her October 25, 2019 SF-86; her Office of Personnel Management (OPM) background investigation conducted from January 6, 2020 to January 20, 2020, containing her January 9, 2020 OPM Personal Subject Interview (PSI); her December 21, 2019, October 5, 2020, July 16, 2021, and January 20, 2022 credit reports; and her November 15, 2021 SOR Answer. (Tr. 10; GE 1 - 6)

Applicant explained that her financial difficulties began in 2016 after her husband had a stroke, was unable to work, and went on disability. He earned a good income working in construction up until the time of his stroke. She also is paying for her middle daughter's \$440 monthly car payments and \$220 car insurance payments. Applicant also provides miscellaneous support for this daughter as needed. (Tr. 18-21)

In 2011, Applicant and her husband filed for Chapter 7 bankruptcy following the 2007-to-2009 recession when construction came to a standstill and her husband was unable to work. Applicant had started her current job in 2008 and was not making enough income to fill the income gaps created by her husband's lack of work. (Tr. 21-22)

Summarized, Applicant's SOR allegations are: (1) collection credit card account for \$4,104; (2) collection credit card account for \$3,236; (3) collection credit card account for \$3,085; (4) collection credit card account for \$3,012; (5) collection credit card account for \$2,409; (6) collection credit card account for \$2,362; (7) collection credit card account for \$2,357; (8) collection credit card account for \$1,385; (9) collection cell phone account for \$1,143; (10) collection credit card account for \$868; (11) collection credit card account for \$627; (12) collection credit card account for \$611; (13) collection credit card account for \$5,751; (14) collection credit card account for \$1,739; and (15) collection cell phone account for \$1,143 (duplicate of #9). As discussed Applicant and her husband filed for Chapter 7 bankruptcy in 2011. (SOR ¶¶ 1.a – 1.p) Applicant admitted all of the SOR allegations in her November 15, 2021 SOR Answer.

Following their 2011 Chapter 7 bankruptcy, Applicant and her husband were able to remain current on their bills until her husband's 2016 stroke. It took "almost two years" before the Social Security Administration (SSA) approved her husband's disability claim. He receives \$2,083 in monthly disability payments. Applicant's annual salary is "[a]bout \$70,000." (Tr. 20, 22-23)

Department Counsel and I reviewed each of Applicant's SOR debts with her. Applicant has not made any effort to contact, pay, or set up a payment plan with any of her creditors. (Tr. 24-44) Applicant explained that given her current income and the need to continue helping her middle daughter in drug rehabilitation, she simply does not have the money to pay any of her creditors. Added to that, Applicant's father passed away in 2013 and her mother moved in with her shortly after. Applicant has found her situation so overwhelming that she has not looked into debt consolidation or bankruptcy. She has not had any financial counseling since her 2011 Chapter 7 bankruptcy. Apart from her SOR debts, Applicant is current on her living expenses. (Tr. 44-45, 59)

Applicant's take-home pay is \$1,500 every two weeks, for a total of \$3,000 a month. With her husband's \$2,083 SSA disability pay, that brings their monthly net total to \$5,083. She and her husband own a single-family four-bedroom home with a monthly mortgage is \$3,585. After paying her mortgage she has a balance of \$1,498 to pay all of her other living expenses such as her husband's \$750 monthly truck payment, utilities, groceries, gasoline, and helping out her middle daughter. Applicant stated, "That's why it just felt overwhelming to me." Applicant has no money left over at the end of the month and has no savings. She has a small 401k that she contributes to from her paycheck. Her husband has no other source of income other than his monthly disability payments. (Tr. 46-51)

Applicant stated that she considered various options to regain financial stability such as liquidating her 401k and consulting a credit counselor. She did not want to go through bankruptcy again. (Tr. 56)

Character Evidence

Applicant's SIL testified on her behalf. SIL works for the same employer in the same department as Applicant and has held a Secret Security Clearance "close to 20 (years)." She has known Applicant since she was five years old or "about 50 years." SIL described Applicant as a great sister-in-law, a great wife, mother, and grandmother. She stated that Applicant is always there for her daughters, is a dedicated and hardworking employee, and willing to do anything she can at work to help her department. SIL described Applicant overall as a "great person." SIL is familiar with all of the challenges that Applicant has faced over the past ten years to include her husband's stroke, her mother passing, and her middle daughter's drug addiction. SIL stated that she would discuss options with Applicant to regain financial responsibility. (Tr. 53-57, 62)

Applicant submitted work performance reviews from 2018 to 2021. It is clear from the reviews that Applicant is a highly regarded and valued employee. (AE A – AE D) She submitted six work-related reference letters. Her supervisors and co-workers have a very high opinion of her and describe her as hard working with a strong work ethic, honest, dependable, trustworthy, and helpful. All of these individuals recommend that Applicant be allowed to keep her clearance. (AE E – AE J) Her employer also gave her a Spotlight Award in September 2021 and a Mission Excellence Award in April 2021. (AE K, AE L)

Conclusion

At the end of Applicant's hearing, I discussed keeping the record open to afford her the opportunity to submit additional mitigating evidence. Her SIL stated she would assist her in evaluating and pursuing her options. (Tr. 60-65) Post-hearing, Applicant forwarded an email to me thanking me for keeping the record open. She informed me that she looked into various options to regain financial responsibility and none of those options were feasible for her at this time. She concluded saying that she is a very honest and trustworthy person and would never jeopardize her job that she has worked very hard to obtain and maintain for the last 14 years. (AE M)

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 AG ¶ 2, describing 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 clearance favorable 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial considerations:

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.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Id. (internal citation omitted).

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

AG ¶ 20 lists seven potential mitigating conditions:

(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;

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

(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;

(f) the affluence resulted from a legal source of income; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

In summary, no mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of her adult life, and she is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting her long-standing financial problems are being addressed, doubts remain about her suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against Applicant.

While the debts alleged in the SOR arguably resulted in large part from circumstances beyond Applicant's control due to her husband's stroke and disability, her middle daughter's rehabilitation costs, and her mother moving into her home, that is only half of the analysis and Applicant's response to her financial problems must be the second consideration. Applicant was unable to submit sufficient evidence to supplement the record with relevant and material evidence to mitigate the financial security concerns. There is no evidence that she maintained contact with her creditors after her 15 accounts when she was unable to make her payments. She did not pursue financial counseling or other avenues of regaining financial responsibility. By failing to provide such information, financial considerations security concerns remain.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. Applicant is a hard-working and intelligent individual. With more effort towards documented resolution of her past-due debts, and a better track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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.p:	Against Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge