



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
)
)
Applicant for Security Clearance) ISCR Case No. 21-02515

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to demonstrate that she has acted responsibly to address and resolve her financial delinquencies. Her lack of action reflects poor judgment. Applicant did not provide sufficient evidence to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 17, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). This action was taken under Executive Order (EO) 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 the adjudicative guidelines implemented by the DOD on June 8, 2017.

In her February 12, 2022 response (Answer), Applicant admitted four SOR allegations (¶¶ 1.a, 1.b, 1.r, and 1.s) and denied the remaining delinquent accounts

alleged in ¶¶ 1.c through 1.q. She requested a hearing before a Defense Office of Hearings and Appeals (DOHA) Administrative Judge.

On July 12, 2022, Department Counsel notified the DOHA Hearing Office that the Government was ready to proceed to hearing. I was assigned this case on August 19, 2022. On October 12, 2022, a notice was issued, scheduling the hearing for October 27, 2022, via video-teleconferencing. The hearing proceeded as scheduled, Department Counsel submitted eight documents, labeled as Government Exhibits (GE) 1 through 8, and Applicant submitted six documents, labeled as Applicant Exhibits (AE) A through F. I admitted all of the documents into evidence without objection. I also held the record open until November 17, 2022, to provide Applicant an opportunity to supplement the evidentiary record. On November 3, 2022, I received the transcript of hearing (Tr.). On November 17, 2022, Applicant requested an extension to submit documentation. I granted her a two-week extension without objection. On December 2, 2022, Applicant provided four documents, AE G through AE J, which I admitted into evidence without objection. The record closed December 2, 2022. (Tr. 36)

Findings of Fact

Applicant is 47 years old. She married in 1998 and was divorced in 2016. Applicant and her ex-husband have three adult children. She previously held a DOD security clearance from approximately 2002 through 2009 while employed as a civilian for the U.S. Army. She suffered a stroke in 2009, returned to work, and then suffered a relapse. Her health issues caused her to quit her job. In 2010, she started a business of screen printing, graphic design, and embroidery. The business was successful and operated until 2016, when she and her husband divorced. Since August 2020, she has been employed for a government contractor as a technical writer. Her annual salary is approximately \$42,000. (AE G; GE 1; Tr. 38-39, 80-81)

Applicant experienced financial problems that caused her and her spouse to file for Chapter 7 bankruptcy in September 2014. She testified the reason for the bankruptcy was due to overspending by her husband. Their scheduled claims of \$324,555 were discharged in December 2014 by the bankruptcy court. (¶ 1.a) (Tr. 24-28, 37; GE 2; SOR Answer)

Applicant testified that she and her husband separated in November 2015, and their divorce became final in 2016. At that time, she believed her finances were good and she purchased a new car in 2016. She stopped operating her business in 2016 even though she said it was a very profitable business. She relied on spousal support and child support to finance her living expenses. Her ex-spouse paid child support but he did not always pay the full amount of her alimony. She claimed he was about \$30,000 in arrears, but she did not provide supporting documentation. (Tr. 24-28, 31, 35-36, 81)

In about 2018, Applicant began to experience financial issues again. She testified that her ex-husband had used her credit to purchase his new wife a wedding ring. She also claimed that some of the marital debt that was supposed to be settled by her ex-spouse per the divorce decree was not paid by him. Applicant's health declined because

she could not purchase medication for her diabetes. Last year, she and her sister provided money to her adult daughter to move into a hotel for a few months with her children due to domestic violence. Applicant estimated that she provided around \$5,000 to her daughter, and this prevented her from paying on some of her delinquent accounts. (Tr. 29-30, 46-47)

The SOR alleges 18 delinquent accounts totaling \$63,535, as follows:

SOR ¶ 1.b alleges that Applicant is indebted to State A in the amount of \$3,003 for a tax lien entered against her in December 2017. At the hearing, Applicant stated that she currently owes about \$300 for unpaid 2016 taxes. She could not remember if the tax issue stemmed from her personal income taxes or from her business. She stated that she had made voluntary payments until she could no longer make any more payments. Thereafter, State A garnished her wages to pay for the tax lien until about February 2020, when her employment contract ended and she was out of a job. After the hearing, Applicant provided a document showing that, as of December 2022, she owed \$180.68 to State A for unpaid 2016 taxes. This tax debt is being paid. (Tr. 37-40; AE G)

Applicant is indebted to seven medical service providers for unpaid medical bills in the total amount of \$5,985. (SOR ¶¶ 1.c, 1.e - 1.j). Applicant initially denied these debts in her Answer because she was unaware of all of these delinquent accounts. She testified that she is using the services of Credit One Solutions to address and resolve these debts. Department Counsel pointed out that her documentation from the credit-repair organization (AE A) did not show that they were addressing any of her unpaid medical accounts. She stated that it is her intention to pay these delinquent medical accounts as long as they are reported on her credit report properly. She has not made any payments on any of these delinquent debts, and they remain unresolved. (Tr. 42-45; AE A, AE I)

SOR ¶ 1.d. alleges that Applicant is indebted in the amount of \$661 for an account placed into collection with a law firm. Applicant testified this debt was for attorney's fees arising from her divorce, and that her ex-husband was supposed to pay these fees. She called the law firm in 2018 or 2019, but since that time, she has not contacted this creditor. She informed Credit One Solutions of this outstanding legal fee, but she is not sure if the company is taking any action. Department Counsel asked her if she could provide documentation to show that her ex-husband is responsible for this debt. Applicant did not submit any corroborating documentation while the record was held open. This debt remains unresolved. (Tr. 47-49)

SOR ¶ 1.k. alleges that Applicant is indebted to an apartment complex in the approximate amount of \$2,771 for a broken lease agreement. She stated that in 2018 she was living in the apartment with her son. He kept having nosebleeds due to mold in their apartment. She contacted the rental office and informed them she was moving out. She admitted that she broke her one-year lease agreement, although she denied this account in her Answer. She testified that she received advice from Credit One Solutions to pay this debt. She called the creditor the day before the hearing and they agreed upon a payment plan. She has not yet made any payments, but she plans to start paying \$100 a month for this debt. Department Counsel asked Applicant to submit documentation of the

payment agreement and any payments made by her while the record was held open. No documentation was submitted, and this debt remains unresolved. (Tr. 49-51, 67-68, 85-86)

SOR ¶ 1.l. Applicant is indebted for a timeshare account in the approximate amount of \$13,283. She testified that after the divorce she purchased the timeshare for her children. She stopped making payments in about 2020, when she had to provide financial assistance to her daughter. Credit One Solutions is disputing this account due to inaccurate reporting. Applicant's intention is to either pay this account or sell the timeshare, if permitted. As of the time the record closed, there was no resolution of this debt, and this account remains unpaid. (Tr. 51-54; AE A)

SOR ¶ 1.m. Applicant is indebted to a credit union for a vehicle loan charged off in the approximate amount of \$32,562. She testified she incurred this loan to purchase a new car after her divorce. She claimed that the credit union changed the loan from a vehicle loan to a signature loan, which increased the interest rate. Even though she still possesses the vehicle, she has not made any car payments for the last two years because the credit union would not accept her payments. Credit One Solutions is disputing this delinquent account and expects to file a lawsuit in the next 60-90 days. Applicant stated that she has not placed her car payments into an escrow account, but it is her intention to pay this debt. There is no resolution of this debt in the record and the account remains unpaid. (Tr. 55-58; AE A)

SOR ¶ 1.n. Applicant is indebted to a credit union in the amount of approximately \$3,558 for a charged-off signature loan. She testified that she is responsible for this debt. She took out this loan to pay for a comedy performance at a community event. However, when the credit union changed her vehicle loan into a signature loan, as stated above, she had a "hissy-fit," especially after she was subjected to disrespectful treatment from the credit union representatives. She stopped making payments, but she intends to make payments on this account in the future. Credit One Solutions is disputing this account. There is no resolution of this debt in the record, and the account remains unpaid. (Tr. 58-61; AE A, AE I)

SOR ¶ 1.o. Applicant is indebted to a bank in the amount of approximately \$308 for a charged-off account. Applicant testified that she does not recognize the name of the bank. Department Counsel showed her the September 2019 report from her background interview. In September 2019, she told the government authorized investigator that she did not recognize this same account, but she intended to do research to determine if this was her account, and if so, she would arrange payments with the creditor. Applicant has not made any payments on this account. She is relying on Credit One Solutions to handle this delinquent account. This debt remains unpaid. (GE 8; Tr. 61-64)

SOR ¶ 1.p. Applicant is indebted to a home-security system company in the approximate amount of \$823, for an account that has been referred for collection. She testified that she has not contacted the creditor. She is relying on Credit One Solutions to handle this delinquent account. This debt remains unpaid. (Tr. 64-66)

SOR ¶ 1.q. Applicant is indebted to a cable utility company in the approximate amount of \$347, for an account referred for collection. Applicant testified that she has not contacted the creditor, but she would look into this account since she has not received any direction from Credit One Solutions. This debt remains unpaid. (Tr. 66-67)

(¶¶ 1.r and 1.s) Applicant is indebted to a collection agency for two accounts (city and waste/recycling) in the total amount of \$234. She admitted both of these accounts in her Answer and listed that they were paid. Department Counsel asked for documentation that would verify the accounts were paid while the record was held open. There is no resolution of this debt in the record and the accounts remain unpaid. (Tr. 67)

Applicant started using the services of Credit One Solutions, a credit repair organization, about a year-and-a-half ago. She pays \$99 a month for their service, and it does not appear that any of that money is used to pay her delinquent creditors. Earlier, she had used the services of another consumer credit company, but after being dissatisfied with that company, she switched to Credit One Solutions. She reported to Credit One Solutions that she had an upcoming security clearance interview, and it was “imperative” that she had “a good credit report.” She is satisfied with Credit One Solutions because they have organized her debts and helped her establish a monthly budget. (Tr. 69-71, 77-78, 84)

Applicant testified that she nets about \$463 every week from her paycheck, after deductions and the tax lien wage garnishment. She also receives about \$2,783 in alimony every month from her ex-husband, who is paying the amount in full and on-time every month. She recently began working a part-time marketing job at a winery, and she receives between about \$150-\$500 a month for her services. She submitted a personal financial statement that shows she has a net remainder of about \$1,535, after paying her monthly expenses. She testified that lately she does not have that much money left over because she has been helping her daughter and grandkids. She currently has about \$800 in her savings account, and \$700 in her checking account. (Tr. 71-77; AE H)

Character Evidence

Four character references praised Applicant’s honesty, reliability, and excellent work ethic. Applicant is active in her community and is considered an upstanding citizen. All of the references considered her an asset to any organization. (AE C, AE D, AE E, AE F)

Policies

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 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 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 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

Guideline F: Financial Considerations

The security concern 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. . . .

Conditions that may raise financial considerations security concerns are provided under AG ¶ 19. The following are potentially applicable in this case:

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

By Applicant's credit reports and admissions, the Government established that Applicant has 18 delinquent accounts totaling \$63,535, to include her unpaid 2016 state taxes. AG ¶¶ 19(a), 19(c) and 19(f) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (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 resolve 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.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly

given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant attributed her financial delinquencies to loss of income and inconsistent alimony support from her husband following their 2016 divorce. In addition, she has provided unexpected financial support to her daughter and grandkids on more than one occasion, and to her financial detriment. Notwithstanding these events that impacted her finances, Applicant must demonstrate that she acted responsibly under the circumstances. She admitted that her lack of oversight, such as organizing her delinquent debts and creating a workable budget, also contributed to her financial delinquencies. She is currently using the services of a credit-repair organization, and she has participated in financial counseling. The credit-repair organization reported to Applicant that she should pay the creditor for her broken lease agreement. The day before the hearing, Applicant called the creditor to arrange a payment plan. There is no evidence in the record that she has ever made a voluntary payment to that creditor.

It is clear from the record that Applicant made several poor financial decisions following her divorce. She stopped operating her business that was profitable, she purchased a new car, she broke a rental lease agreement, and she purchased a timeshare that she could not afford. In September 2019, she was interviewed about the delinquent credit accounts reported on her credit report. She stated to the investigator that she would look into these accounts, and if they were her responsibility, she would arrange payments. That interview took place more than three years ago. There is no evidence that she made any voluntary payment arrangements with her delinquent SOR creditors, or that she voluntarily paid, resolved, or successfully disputed any of the debts alleged in the SOR. The only debt being paid is the (involuntary) wage garnishment issued by State A to recover her delinquent 2016 unpaid taxes after she stopped making voluntary payments. Overall, I find that Applicant has not demonstrated that she acted responsibly to address her financial delinquencies. Applicant did not provide sufficient evidence to mitigate the financial considerations security concerns.

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 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the adjudicative 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has failed to demonstrate that she has acted responsibly to address and resolve her financial delinquencies. Her lack of action reflects poor judgment and unreliability. Applicant did not provide sufficient evidence to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

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.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.s:	Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge