



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



In the matter of:)
)
) ISCR Case No. 22-00348
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

02/08/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has provided evidence sufficient to mitigate the national security concern arising from her problematic financial history. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her security clearance application (SCA) on August 18, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on May 4, 2022, detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On May 26, 2022, Applicant submitted an answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) in lieu of a hearing. On July 8, 2022, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 12. Applicant received the FORM on August 2, 2022. She was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Her response to the FORM was dated August 16, 2022 (Response). Department Counsel did not object to the Response. The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in the case. Items 3 through 12 and the Response are admitted without objection. The case was assigned to me on October 3, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 41 years old, has never married, and has one child, seven years old. She is a high school graduate, with some college credits but no degree. She and her child live with her parents. Since February 2010, she has been employed by a defense contractor. (Item 3.)

According to Applicant's April 28, 2021 Personal Subject Interview (PSI), her financial difficulties began in 2012 or 2013. In that time frame, she was making about \$65,000 gross per year. She then was moved, however, to work on a different contract for the same employer; that reduced her pay to about \$45,000 gross per year. Then in 2014, she had surgery and related uncovered medical expenses. In 2015, she gave birth to her child. (Item 4.)

In 2021, the father of Applicant's child was also having financial problems and stopped paying child support. She considered filing for bankruptcy but could not afford the filing fee. With the decreased salary and loss of child support, she was unable to make minimum monthly payments on many of her accounts. She used her tax refunds to repay loans from her parents. She managed to pay her auto payments and insurance, because she needed her car for transportation to and from work. At that time, her gross monthly income was \$5,083 and a net after deductions of \$3,032. After her routine household expenses, that left her with a monthly net remainder of negative \$121. (Items 4 and 5.) The majority of her accounts became delinquent between 2016 and 2017, or later. (Items 11 and 12.)

Applicant's August 16, 2022 Response to the FORM stated that she is in a much better position financially than at the time of her PSI. Since her PSI, she received a raise that made her annual salary \$57,833, up from \$45,000. She also obtained a court order directing her child's father to pay \$1,000 per month in child support, which he has been consistently paying. Included in her monthly budget is \$729 she pays to a debt relief agency to settle or resolve ten of her SOR debts. (SOR ¶¶ 1.a – 1.i & 1k.) Another monthly

budget item is a \$150 payment to a collection attorney to resolve SOR ¶ 1.j. She now has a monthly net remainder of \$873, up from a negative \$121 monthly net remainder at the time of her PSI. She also attached documents showing that she is current on her utilities, phone, and Internet bills (not alleged in the SOR). Documents attached to her Response support her assertions. (Response at 1-5, 9-12, 14-18, 22, 24-27.)

The SOR alleged 20 delinquent accounts that are judgments, charge offs, or in collection totaling \$65,078. (Item 1.) The first nine accounts and the eleventh (SOR ¶¶ 1.a – 1.i & 1.k) totaling \$53,789 have been enrolled with Applicant's debt relief agency and are being resolved by Applicant's monthly payment of \$729 to that agency, (Item 2 at 18-22; Response at 4.) The status of the remaining ten SOR accounts is described below.

SOR ¶ 1.j is an account in collection for \$1,629. This account is being resolved by Applicant's monthly payment of \$150 to a collection attorney. (Item 2; Response at 4, 17-18.)

SOR ¶ 1.l is an account in collection for \$581. Applicant denied this debt, answering that she paid in full and has filed a dispute to correct the record. (Item 2.) She did not produce any documents supporting that assertion. This debt is not resolved.

SOR ¶ 1.m is an account in collection for \$280. Applicant denied this debt, answering that she paid in full. (Item 2.) She did not produce documents supporting that assertion. She produced a June 11, 2022 document acknowledging a dispute and stating that the charge was valid. (Response at 28.) This debt is not resolved.

SOR ¶ 1.n is an account in collection for \$223. Applicant admitted this debt, answering that the debt will be paid in full by July 2022. (Item 2.) She produced documents that this account is current as of August 11, 2022. (Response at 9-12.) This debt is resolved.

SOR ¶ 1.o is an account in collection for \$1,902. Applicant denied this debt, answering that it has been paid in full. (Item 2.) She did not produce documents supporting that assertion. This debt is not resolved.

SOR ¶ 1.p is an account charged off for \$1,009. Applicant denied this debt, answering that it has been paid in full. (Item 2.) She did not produce documents supporting that assertion. This debt is not resolved.

SOR ¶ 1.q is a judgment for \$1,629. Applicant denied this debt, answering that it has been paid in full. (Item 2.) A judgment for this amount was entered on July 16, 2021, plus interest and fees totaling \$1,703. This debt was not resolved by Applicant.

SOR ¶ 1.r is a judgment for \$1,776. Applicant denied this debt, answering that it has been paid in full. (Item 2.) A consent judgment for this amount was entered on

September 4, 2020, plus interest and fees totaling \$1,850. This debt has not been resolved.

SOR ¶ 1.s is a judgment for \$1,009. Applicant admitted this debt, answering that it has been paid in full. (Item 2.) This judgment was satisfied on July 19, 2021. (Item 8.) This debt has been resolved.

SOR ¶ 1.t is a judgment for \$1,251. Applicant denied this debt, answering that it has been paid in full. (Item 2.) A judgment in this amount was entered and a lien recorded on March 4, 2020, plus fees totaling \$1,285. This debt has not been resolved.

The FORM included Court Case Summaries documenting judgments entered against Applicant. (Items 6-10.)

In sum, Applicant resolved 13 SOR debts totaling \$56,650, leaving 7 unresolved debts totaling \$8,428.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court 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).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then 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 in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

The security concern relating to Guideline F 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information 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).

Guideline F notes conditions that raise security concerns under AG ¶ 19. Applicant's admissions, the Court Case Summaries, and the Government's credit reports show that AG ¶¶19(a) (inability to satisfy debts) and 19(c) (a history of not meeting financial obligations) apply.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors.

The question is whether any mitigating conditions apply on these facts. Many of Applicant's SOR debts became delinquent in 2016, 2017, or later. That is not very long ago. Nor were those SOR debts infrequent. And they persist to the present. Because of the frequency and recency of the debts, AG ¶ 20(a) does not mitigate her debts.

Mitigating condition AG ¶ 20(b) requires a two-step analysis. First, the conditions that caused Applicant's "financial problem" must have been "largely beyond" her control. In 2012 or 2013, her employer moved her to a different contract. As a result, her annual pay was reduced by 30%. That alone would have had an unexpected and significant negative impact on her finances. In 2014, she had surgery that resulted in expenses not fully covered by her insurance. No doubt that too aggravated her financial problems. And in 2015, she gave birth to her first child. Those circumstances were without question beyond her control, and individually even one of those circumstances could have adversely affected her financial condition. To make matters worse, in 2021 the father of her child stopped paying his \$1,000 of child support. The first question under AG ¶ 20(b) is answered in her favor.

That brings up the second question under AG ¶ 20(b). Did Applicant act responsibly when facing that array of adverse circumstances? At the outset, she and her child began living with her parents. She used her tax refunds to repay loans she had taken from her parents. She considered filing for bankruptcy but lacked the funds to pay the filing fee. Instead, she enrolled ten of her largest debts in a debt relief agency. She pays \$729 per month to that agency towards paying off those debts, all of which are listed in the SOR. And she obtained a court order directing the father of her child to resume paying his \$1,000 per month child support. Not only is the foregoing conduct responsible under AG ¶ 20(b), it also satisfies mitigating condition AG ¶ 20(d). She has initiated and is adhering to a good-faith effort to repay her overdue creditors.

Applicant's SOR debts are mitigated by AG ¶¶ 20(b) and (d). Moreover, the unresolved SOR debts of \$8,428 are not of a sufficient value to raise national security concerns. I find in favor of Applicant on SOR ¶ 1.

The Whole-Person Concept

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. See AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case. More specifically, Applicant produced documents showing that she was current with her utilities, phone, and Internet bills. Those were not alleged in the SOR. Conduct not alleged in a SOR may be considered for limited purposes, one of which is to assess mitigating circumstances. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). Applicant volunteered that information, and it works in her favor.

Applicant leaves me with no questions about her eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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.t.: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security for Applicant to be eligible for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge