



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



In the matter of:)	
)	
)	ISCR Case No. 19-03198
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany C.M. White, Esq., Department Counsel
 For Applicant: *Pro se*
 02/07/2023

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

The Government failed to establish any disqualifying conditions concerning the Guideline E (Personal Conduct) security concern; however, Applicant did not mitigate the Guideline F (Financial Considerations) security concern. She has numerous unresolved delinquent debts. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on April 23, 2018. On August 31, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines E and F. She submitted an undated response to the SOR in February 2022, and requested a decision based upon the administrative record in lieu of a hearing (Answer). However, she failed to admit or deny the allegations and was asked to submit an updated response. She submitted a second undated response admitting and denying the Guideline F allegations; however, she failed to respond to the Guideline E allegation alleged in SOR ¶ 2.a. She was requested to admit or deny this allegation, and on July 19, 2022, she submitted a third response to the SOR. These collective responses to the SOR are considered her Answer (Item 2).

On August 10, 2022, the Government sent Applicant a copy of the file of relevant material (FORM), dated August 9, 2022, including evidentiary documents identified as

Items 1 through 7. She received the FORM on September 29, 2022, and was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She responded to the FORM on November 1, 2022, and submitted documents that I marked as Applicant Exhibits (AE) A through J. Items 1 to 7 and AE A to J are admitted into evidence without objection. The case was assigned to me on December 7, 2022.

Findings of Fact

Applicant, age 54, has been married and divorced three times. She was married for less than a year in 1992, from 1999 to 2004, and from 2005 to 2012. She has three adult children who are approximately 22, 27, and 32 years old. In 2011, she received an associate degree in general studies, and in 2021, she received a bachelor's degree in business administration management. She has worked as an administrative assistant for her current employer, a DOD contractor, since April 2018. She served on active duty in the U.S. Army from 2007 to 2017, and was honorably discharged as a sergeant. She served in Iraq from May 2009 to May 2010, and has held a DOD security clearance since approximately 2008. (Items 1-3, 7; AE A; AE I; AE J)

The SOR alleged that Applicant has fifteen delinquent debts totaling approximately \$71,031. She admitted SOR ¶¶ 1.a through 1.g; however, I construed her explanations as *de facto* denials, because she indicated these debts were either paid, resolved, two of her ex-husbands' responsibility, or unknown to her. She denied the remaining Guideline F allegations. She admitted the Guideline E allegation, that she falsified her 2018 SCA by failing to disclose the debts alleged in SOR ¶¶ 1.a through 1.o; however, because she explained that her failure to disclose the debts was unintentional, I construed her answer as a *de facto* denial. (Items 1-2, 7; AE A)

Applicant attributed her financial problems largely to being a single mother, her divorces, a lack of financial support from her sons' three fathers, a period of unemployment (December 2017 to March 2018) after she left the Army, and her middle child's extensive medical bills and treatment for numerous medical conditions, including terminal brain cancer. She left the Army due to her middle son's extensive medical issues and his need for specialized medical care. (Items 2, 7; AE A; AE E)

In Applicant's October 2018 SCA, she failed to disclose any of her delinquent debts, but she disclosed that while she was on active duty she was counseled or disciplined for misusing her Government credit card in 2016. (Item 3) During her December 2018 personal subject interview, the government investigator confronted her regarding many of the delinquent debts alleged in the SOR. (Items 3-7)

SOR ¶ 1.a: This automobile loan was opened in July 2016, in the amount of \$26,326. The last payment was made in approximately October 2017, and it was charged off in the amount of \$10,895. This debt is a duplicate of SOR ¶ 1.o, as both accounts were opened in the same month. Although the account number for SOR ¶ 1.a is incomplete in the credit bureau reports (CBR), the available account numbers in other portions of the record match for both allegations. This debt remains outstanding in her most recent CBR. (Item 2; 4 at 7; Item 5 at 6; Item 6 at 11)

During Applicant's December 2018 interview, she told the investigator that a vehicle she purchased with her son was damaged by hail. Her insurance company, which also happens to be the creditor alleged in SOR ¶ 1.i, took possession of the vehicle and subsequently paid off the loan. In her Answer to the SOR, she inconsistently indicated there was a recall on the engine that the manufacturer did not honor. She "called the company and told them what the issue was and they stated that they would take the [vehicle] back and send it to auction and the balance would be paid off." She also claimed in her Answer that "we" are making payments but did not provide substantiating documents. (Item 2 at 6, 9; Item 7 at 5-6)

SOR ¶ 1.b: This account was opened in May 2017, and it was charged off in the amount of \$6,614, after it became delinquent in November 2017. Applicant claimed in her Answer that she paid this debt when she left active duty. In her response to the FORM, she provided documentation that this creditor overcharged her \$1,071 in interest that was refunded to her in April 2022 via a check. However, her most recent CBR, dated August 2022, indicates the balance for the alleged debt is currently \$9,858, and the original loan details are consistent with the debt alleged in the SOR. (Item 2 at 6; Item 4 at 7, 9; Item 5 at 2; Item 6 at 3; AE C)

SOR ¶ 1.c: This account was opened in February 2012, Applicant's last payment was made in June 2016, and it was eventually charged off in the amount of \$3,092. She told the investigator that her ex-husband was responsible for this credit-card account. In her Answer, she claimed that this debt was for a vehicle, she paid the debt, and had title for the vehicle. She did not provide documentation to support her various assertions, and based upon the information in the CBRs, this appears to be a credit-card account. (Item 2 at 6, 9; Item 4 at 6; Item 5 at 2; Item 6 at 9; Item 7 at 12, 16)

SOR ¶ 1.d: In February 2017, this account was placed for collection in the amount of \$3,026. In her Answer to the SOR, Applicant asserted that she did not recognize the alleged debt. She provided no documentation to demonstrate resolution of the debt or to dispute the debt. (Item 2 at 6, 9; Item 5 at 2; Item 6 at 9)

SOR ¶ 1.e: In February 2017, this account was placed for collection in the amount of \$2,783. Applicant told the investigator that her military separation pay was garnished to resolve this debt, and she provided documentation to demonstrate the balance is \$0. (Items 4-7; AE D)

SOR ¶ 1.f: This credit-card account was opened in July 2011, and it was charged off in the amount of \$2,528 in approximately 2017. Applicant initially told the investigator that she had a joint account with third ex-husband to whom she was married from 2005 to 2012. In a subsequent interview in January 2019, she indicated that she contacted the creditor, the account was solely in her third ex-husband's name, and she intended to file a dispute. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 7, 9; Item 4 at 6; Item 5 at 2; Item 6 at 10; Item 7 at 10, 14-15)

SOR ¶ 1.g: This installment account was opened in April 2017. In September 2019, it was 180 days past due in the amount of \$1,998. According to Applicant's August 2022

CBR, this account was eventually charged off in the amount of \$2,978. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 6, 9; Item 4 at 8; Item 5 at 2; Item 6 at 3)

SOR ¶ 1.h: This \$580 credit-card account was opened in November 2013, and charged off in 2016 or 2018. In December 2018, Applicant told the investigator that her middle son was using this card and not paying it and that she paid the debt in full once she became aware of the issue. In her Answer, she indicated that she had just paid the debt. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 7, 9; Item 4 at 6; Item 5 at 2; Item 6 at 10; Item 7 at 10)

SOR ¶ 1.i: This \$239 insurance account was placed for collection in approximately 2014. Applicant told the investigator that she had a current account with this company without a past due balance. In her Answer, she indicated she had no knowledge of this debt, but would call the creditor and pay it if necessary. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 7, 10; Item 5 at 2; Item 6 at 10; Item 7 at 11)

SOR ¶ 1.j: This \$6,615 credit card account was opened in 2011, and placed for collection in 2015. Applicant told the investigator that her second ex-husband opened this account in her name, and he was required to pay it per their divorce settlement. However, they were married from 1999 to 2005. In January 2019, she told the investigator that she intended to dispute this debt. In her Answer, she reiterated that her ex-husband is responsible, and asserted that it no longer appears on her CBR. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 7, 10; Item 3 at 24; Item 6 at 8; Item 7 at 12, 16)

SOR ¶ 1.k: This \$546 cable account was opened in 2017, and placed for collection in 2018. Applicant told the investigator that she had no knowledge of the account. In her Answer, she asserted that she has an open account with this company. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 7, 10; Item 6 at 8; Item 7 at 12)

SOR ¶ 1.l: This \$3,150 cellular-phone account was opened and placed for collection in 2018. Applicant told the investigator that she had no knowledge of the account. In her Answer, she asserted that she has an open account with this company. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 7, 10; Item 6 at 8; Item 7 at 11)

SOR ¶ 1.m: This \$122 medical account was placed for collection in approximately 2018. Applicant's middle son has significant medical issues, and in 2017, unalleged medical bills totaling approximately \$70,000 to \$80,000 were placed for collection. According to her, TRICARE was responsible for all of these medical bills, including this \$122 medical debt. Although she did not provide substantiating documentation, because there are no other delinquent medical bills on her CBRs the lack of additional medical bills on her CBRs, lends credence to her argument. (Item 2 at 7, 10; Item 6 at 9; Item 7 at 3, 5-9; AE F; AE G)

SOR ¶ 1.n: This \$229 cable account was placed for collection. Applicant told the investigator that this debt was paid and should not be on her CBR. She also indicated in her Answer that she paid the bill in full years ago. She provided no documentation to demonstrate resolution of the debt. (Item 2 at 7, 10; Item 6 at 11; Item 7 at 10)

SOR ¶ 1.o: This debt is a duplicate of SOR ¶ 1.a as discussed above. (Item 2 at 7, 10; Item 6 at 10; AE G)

Applicant receives disability pay due to her service in the Army and has a 100% disability rating. Her total yearly income is over \$100,000, but she did not provide a written budget or information regarding her savings or other assets. There is no evidence that she has sought or received financial counseling. (Item 2 at 6)

Applicant's most recent CBR from August 2022, reflects two new delinquent debts that were placed for collection totaling \$2,304. These debts were unalleged in the SOR and will not be considered disqualifying, but they may be considered in determining if the mitigating conditions and whole person are applicable. (Item 4 at 4, 7)

Applicant reported in her SCA that, in 2017, while she was still on active duty in the Army, she received an Article 15 for misusing her Government credit card. She did not disclose any debts in her SCA and told the investigator that she was not aware of the debts alleged in the SOR as she thought she was doing well financially. In her Answer to the SOR and response to the FORM, she indicated that she did not intentionally falsify her SCA. (Item 2 at 2-3; Item 3; Item 7 at 3, 10-13; AE A)

Applicant provided a letter of recommendation in her response to the FORM from a senior colonel who has supervised her since June 2021. He finds her to be "a paragon of integrity and character," who has "unequivocally demonstrated a history of honesty, discretion, reliability, sound judgment, strength of character, trustworthiness, and loyalty to this great Nation." (AE H)

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 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 concern under Guideline F (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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts establishes the following disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. 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;
- (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 or provides evidence or actions to resolve the issue.

Applicant has over \$71,000 in delinquent debt. She provided documentation that demonstrated resolution of one credit-card debt. The auto loan alleged in SOR ¶ 1.o is a duplicate of the debt alleged in SOR ¶ 1.a. Based upon the totality of the evidence in the record, I find that the \$122 medical debt alleged in SOR ¶ 1.m is mitigated. However, she failed to provide any evidence that she has contacted any of creditors of the debts alleged in SOR 1.a through 1.l, or 1.n to establish payment arrangements. Nor has she provided documentation to demonstrate that she has resolved those debts or is not responsible for those debts.

I considered that Applicant is a single mother, experienced a short period of unemployment following her honorable discharge from the Army, and has a son with numerous and significant medical issues. However, the record is absent any evidence of an effort by her to resolve her debts or prove that the outstanding debts are not her

responsibility. Accordingly, there is insufficient that she has acted responsibly to resolve her financial issues.

Applicant's failure to resolve her existing debts and the new delinquent debts in her August 2022 CBR, indicate her financial issues are an ongoing and continuing concern. Therefore, her behavior continues to cast doubt on her reliability, trustworthiness, and good judgment. She has not provided sufficient evidence of a good-faith effort to repay or resolve her delinquent debts. For the forgoing reasons, Applicant failed to establish mitigation under AG ¶¶ 20.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes the following condition that could raise a security concern and be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, the Government has the burden of proving it. An omission standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of

mind at the time of the omission. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance was deliberate. (ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010))

In this case, Applicant denied the allegation in her Answer. She failed to disclose delinquent debts in her 2018 SCA. During her December 2018 interview with an investigator, she expressed surprise that she had numerous delinquent debts as she was under the impression that they had been resolved. She reiterated these claims in her Answer and response to the FORM.

I find that the record does not demonstrate sufficient evidence of Applicant intentionally, deliberately concealing, or falsifying her SCA. Additionally, her disclosure in her SCA of her 2017 Article 15 for misuse of her government credit card reflects her willingness to voluntarily to disclose derogatory personal information that could negatively affect her ability to obtain or retain a security clearance. Therefore, the Guideline E security concerns are decided for Applicant.

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 guidelines and the whole-person concept. I considered Applicant's honorable military service, her glowing letter of recommendation from a senior military officer, and 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 in my whole-person analysis. I conclude Applicant has not met her burden of proof and persuasion. She did not mitigate the financial considerations security concerns or establish her eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge