



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



In the matter of:)
)
) ISCR Case No. 21-00724
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 30, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on June 1, 2021, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 28, 2022, scheduling the matter for a virtual hearing, via Microsoft Teams, for April 21, 2022. I convened the virtual hearing as scheduled.

At the hearing, Government Exhibits (GE) 1 through 4 were admitted without objection. Applicant testified. She did not present any documentation. At Applicant's request, I kept the record open until May 5, 2022, for additional documentation. By that date, Applicant submitted additional documentation, which I collectively marked as AE A. DOHA received the hearing transcript (Tr.) on May 2, 2022. (Tr. at 15-19, 96-98, 102-103; GE 1-4;)

Findings of Fact

Applicant admitted all of the SOR allegations. She is 43 years old. She married in 2009 and divorced in 2012. She has two children; one is an adult and the other is a minor. One of her children is physically and intellectually disabled and requires personal care and supervision. Applicant graduated from high school in 1997, and she obtained a bachelor's degree in 2011. She has owned her home in state A since October 2017, where she lives with both of her children. (Answer; Tr. at 7-8, 20-22, 45-48; GE 1; AE A)

Applicant was unemployed from December 2010 to March 2012, after she relocated to state B. During this time, she provided 24-hour home care to her elderly grandparent. She worked for a previous DOD contractor from February 2018 to April 2020. She was unemployed for one month in 2020. As of the date of the hearing, she worked as a senior software engineer for her employer, a DOD contractor, since May 2020. She was first granted a security clearance in 2018. As of the date of the hearing, she held access to public trust since 2012. (Tr. at 5-9, 22-30; GE 1; AE A)

The SOR alleged that Applicant failed to timely file her federal and state income tax returns for tax year (TY) 2017, as required (SOR ¶ 1.a). It also alleged that she had two delinquent medical debts, totaling \$2,827 (SOR ¶¶ 1.b, 1.e), and 13 delinquent consumer debts, totaling \$39,748 (SOR ¶¶ 1.c, 1.d, 1.f - 1.p). The SOR allegations are established by Applicant's admissions in her Answer; her May 2020 security clearance application (SCA); her April 2021 response to interrogatories; a background interview conducted in June 2020; and credit bureau reports from 2020 and 2021. SOR ¶¶ 1.c and 1.e through 1.p are reported on the 2020 credit bureau report. SOR ¶¶ 1.b through 1.k are reported on the 2021 credit bureau report. (Answer; GE 1-4)

Applicant attributed her failure to timely file her federal and state income tax returns for TY 2017 to losing her tax documentation when she moved into her home in 2017, and then having to reassemble her required tax documentation. She stated, "And it honestly slipped my mind, because I'm one of those people, since I never owe, I usually file my taxes later in the year, and I just didn't that year." She also testified that she was misinformed by a family member, years ago, that she had seven years to file her tax returns if she did not owe taxes, and because she was due federal and state tax refunds for TY 2017, she mistakenly relied on that misinformation. (Tr. at 31-33, 82-88; GE 1, 2; AE A)

Applicant completed both her federal and state income tax returns for TY 2017 using an online tax filing software, but she could not file them electronically because too much time had lapsed since they were due. She mailed her federal income tax return for

TY 2017 to the IRS in September 2021. As of the date of the hearing, she had not yet mailed her completed state income tax return for TY 2017 to the state tax authority, but she stated that she would do so. She forfeited her federal and state income tax refunds for TY 2017 due to her late filing. (Answer; Tr. at 31-33, 82-88; GE 1, 2; AE A)

April 2021 IRS tax account transcripts reflect that Applicant filed her federal income tax returns for TY 2016 in April 2017, for TY 2018 in May 2019, and for TY 2019 in March 2020. The transcripts also reflect that Applicant was issued refunds in the amounts of \$572; \$2,260; and \$3,353, respectively. She stated in her 2021 response to interrogatories that she filed her state income tax returns: (1) for TY 2016, but the date in which she filed was not listed on the tax documentation; (2) for TY 2018 and 2019 in March 2019 and February 2020, respectively; and (3) she anticipated owing \$1 in state taxes for TY 2016, and nothing in state taxes for TY 2017 to 2019. (Answer; GE 1, 2; Tr. at 31-33, 82-88; GE 2; AE A)

Applicant attributed her delinquent consumer debts to beginning in 2014, when she transferred jobs due to a lack of income. Simultaneously, her roommate moved out of their rental abruptly, and the leasing company charged Applicant \$3,120 in fees for breaking her lease. She also experienced financial strain when she had medical issues related to a minor surgery in approximately 2014 and a major surgery in 2016, for which she was hospitalized. Losing her grandmother in 2015 and her niece in 2017 also weighed heavily on her. (Answer; GE 1, 2; Tr. at 21, 36-45, 88-89; AE A)

Applicant stated that when she purchased her home in 2017, "I had really decent credit . . . and then things kind of got out of hand." She was unprepared for the expenses of homeownership. She earned minimal income from September 2017 to February 2018. She did not expect that her job would turn out to be a sales position, with her income dependent on earning commissions. She left her sales position "because I couldn't make enough money to pay my bills," and she obtained employment with a previous DOD contractor in February 2018. She stated that "by that time, it was a snowball effect." She did not reach out to any of her creditors to try to work out payment arrangements. (Answer; GE 1, 2; Tr. at 21, 36-45, 88-89; AE A)

In October 2019, Applicant contacted a debt-consolidation company (Company A) to clean up and get control of her credit. Company A provided her with credit counseling. Company A told her that she did not qualify for consolidation, due to the nature of her collection accounts and her desire to include debts that were not yet delinquent. She chose to take a "short-term hit" for a "long-term gain." At Company A's advice, she enrolled in Company A's debt-settlement program; immediately stopped making payments toward any of the creditors included in her program, to include those debts that were not yet delinquent; and referred her creditors to Company A. Company A negotiated her debts on her behalf. (Answer; GE 1, 2; Tr. at 21, 36-43, 45-48, 51, 58, 61-63, 68-69, 73; AE A)

Applicant paid approximately \$612 monthly into Company A's debt-settlement program, from around November 2019 to August 2021. She then graduated to Company A's debt-consolidation program, and company A settled her debts utilizing money she

paid into Company A's settlement program, as well as a \$24,000 loan she obtained in September 2021. At her ex-spouse's suggestion, she also refinanced her home in November 2019, for a better interest rate that would lower her monthly mortgage and free up money to allow her to continue addressing her debts. Through refinancing, her monthly mortgage payment decreased by approximately \$61, to \$1,719 monthly. (Answer; GE 1, 2; Tr. at 21, 36-43, 45-48, 51, 58, 61-63, 68-69, 73; AE A)

SOR ¶ 1.b is for a \$365 medical debt in collection. Applicant believed this was related to one of her surgeries. She settled this debt for \$255. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 33-35; GE 3; AE A)

SOR ¶ 1.c is for a \$920 home internet account in collection. Applicant indicated during her background interview that when she moved in 2017, she transferred her home internet service from her previous home to her current home. The service provider created a second account for her, but continued to bill her for the old account. She settled this debt for \$459 in June 2021. (Answer; Tr. at 35-36, 42-43; GE 2, 3, 4; AE A)

SOR ¶ 1.d is for a \$3,120 rental account in collection, for charges related to Applicant breaking her lease in 2014. The charges consisted of two months' rent, in addition to cleaning fees. Applicant offered to pay the leasing company one month's rent, or \$1,400, but the leasing company rejected her offer and demanded she pay the charges in full. On her minimal income at the time, she could not afford to pay the leasing company \$3,120, so she applied the \$1,400 she offered the leasing company to expenses related to her home. She settled this debt for \$1,560 in August 2021. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 43-45, 48-49; GE 3; AE A)

SOR ¶ 1.e is for a \$2,462 medical debt in collection. This debt is for Applicant's outstanding balance for a surgery she had in 2016, after her medical insurance paid its share. She settled this debt for \$1,231 in June 2021. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 49-51; GE 1, 2, 3, 4; AE A)

SOR ¶ 1.f is for a \$1,563 wireless cellular account in collection. Applicant traded in her old cellular phone for a new one, and the wireless provider continued to bill her for her old phone. She settled this debt for \$1,563 in May 2021. (Answer; Tr. at 51-53; GE 2, 3, 4; AE A)

SOR ¶ 1.g is for a \$1,337 charged-off credit card. Applicant used this credit card for personal expenses. She stated that this debt was not delinquent when she chose to include it in her plan with Company A. She settled this debt for \$480 in June 2021. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 53-55; GE 2, 3, 4; AE A)

SOR ¶ 1.h is for a \$1,379 charged-off retail furniture account. Applicant opened this account in 2017, to furnish her home. She stated that this debt was not delinquent when she chose to include it in her plan with Company A. She settled this debt for \$620 in May 2021. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 55-56; GE 1, 2, 3, 4; AE A)

SOR ¶ 1.i is for a \$2,926 charged-off credit card. Applicant used this credit card for personal expenses. She stated that this debt was not delinquent when she chose to include it in her plan with Company A. She settled this debt for \$1,171 in October 2020. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 56-58; GE 3, 4; AE A)

SOR ¶ 1.j is for a \$1,398 credit card in collection. Applicant used this credit card for personal expenses. She stated that this debt was not delinquent when she chose to include it in her plan with Company A. She settled this debt for \$613 in September 2020. (Answer; Tr. at 40-41, 58-60; GE 1, 2, 3, 4)

SOR ¶ 1.k is for a \$12,685 charged-off credit card. Applicant used this credit card for personal expenses. She stated that this debt was not delinquent when she chose to include it in plan with Company A. She settled this debt in May 2021 for \$8,880. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 60-63; GE 1, 2, 3, 4; AE A)

SOR ¶ 1.l is for a \$837 past-due account, with a total balance of \$3,533. Applicant could not recall which retailer was associated with this account. She settled this debt for \$1,831 in August 2020. Her April 2022 credit bureau report reflects that this debt is paid. (Answer; Tr. at 63-66; GE 2, 4)

SOR ¶ 1.m is for a \$468 past-due store credit card, with a total balance of \$2,272. Applicant used this credit card to purchase electronics for her home. She stated that this debt was not delinquent when she chose to include it in her plan with Company A. She settled this debt for \$1,885 in January 2021. Her April 2022 credit bureau reports reflect that this debt is paid. (Answer; Tr. at 66-68; GE 1, 2, 4; AE A)

SOR ¶ 1.n is for a \$435 past-due credit card, with a total balance of \$1,709. Applicant used this credit card for personal expenses. She stated that this debt was not delinquent when she chose to include it in her plan with Company A. She settled this debt for \$769 in August 2020. (Answer; Tr. at 68-70; GE 1, 2, 4; AE A)

SOR ¶ 1.o is for a \$6,249 personal loan in collection. Applicant obtained this loan in 2016, but she could not recall why she did so. At Company A's advice, she included this loan in her plan with Company A, because its high interest rate impeded her ability to pay it off. Applicant settled this debt for \$2,499 in April 2021. (Answer; Tr. at 70-72; GE 1, 2, 4)

SOR ¶ 1.p is for a \$657 charged-off line of credit. Applicant took out a \$2,000 loan in approximately 2014 for a car repair. Because she had bad credit at the time, the loan had a high interest rate. She stated that this debt was not delinquent when she chose to include it in her plan with Company A. She settled this debt for \$303 in August 2020. (Answer; Tr. at 72-73; GE 2, 4; AE A)

As of the date of the hearing and since January 2022, Applicant's annual income was approximately \$130,000. She tracked her income and expenses through her bank.

She was current on her monthly expenses, to include her mortgage, car payment, and debt consolidation loan payment, of \$1,719; \$440; and \$617, respectively. She estimated that her monthly net remainder, after expenses, was \$2,500. She had approximately \$3,800 in her checking and savings accounts. She understood the importance of timely filing her federal and state income tax returns, and she intended to timely file all of her future income tax returns. (Tr. a 22-24, 74, 75-82, 89-95; GE 1; AE A)

In December 2020 and December 2021, Applicant's employer gave her favorable performance evaluations; end-of-year bonuses in recognition of her great work; and salary increases effective January 2021 and January 2022, respectively. Character letters from five individuals, which included her immediate supervisor since 2020, her manager since 2020, and a friend of nearly 20 years, attested to her reliability, trustworthiness, and dedication. (AE A)

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(a), 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 Exec. Or.

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* Exec. Or. 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

The guideline notes several conditions that could raise security concerns 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.

Applicant was unable to pay her debts, and she failed to file her federal and state income tax returns for TY 2017, as required. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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

(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.

Conditions beyond Applicant's control contributed to her financial problems. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), she must provide evidence that she acted responsibly under her circumstances. Applicant filed her federal income tax return for TY 2017 in September 2021, and she stated that she would mail her completed state income tax returns for TY 2017 to the state tax authority. She forfeited her federal and state income tax refunds for TY 2017 due to her late filing. She understood the importance of timely filing her federal and state income tax returns, and she intended to timely file all of her future income tax returns. In addition, she provided documentation reflecting that she resolved SOR debts ¶¶ 1.b through 1.p. She established good-faith efforts to repay her debts when she began working with Company A in October 2019. Her finances are under control and they no longer cast doubt on her judgment, trustworthiness, and reliability. I find that ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) apply.

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 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. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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 - p:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge