



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 22-00689
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2023

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 17, 2021. On June 23, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted 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 (AG) implemented by the DOD on June 8, 2017.

Applicant submitted an undated response to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On August 9, 2022, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM) including evidentiary documents identified as Items 1 through 7. She was given

an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on September 4, 2022, and timely submitted her response, which I marked as Applicant's Exhibits (AE) A through C. Items 1 and 2 contain the pleadings in the case. Without objection, Items 3 through 7, and AE A through C, are admitted into evidence. The case was assigned to me on October 3, 2022.

Findings of Fact

Applicant, age 33, is unmarried and has no children. She attended college from approximately August 2011 through April 2013 without earning a degree. She has been employed as a correctional officer by her state since September 2022. She previously worked there from November 2016 through August 2021. The record indicates that Applicant had more than one sponsor associated with the SCA, which is her first application for a security clearance. In her FORM response, she indicated that employment with her current sponsor is pending the successful adjudication of her security clearance. The interim security clearance she was granted sometime in 2021 was withdrawn in about June 2022, presumably in connection with the issuance of the SOR. (Item 3; Item 5 at 17-18; AE A, C)

Applicant worked in the retail and food service industry from February 2008 through November 2016. She was employed full time from February 2008 through October 2010 when she relocated to attend community college. She remained unemployed until she began a full-time position in March 2012, which she left in January 2015 for a reason identified as a "location change." Applicant began a part-time position with Employer A at the beginning of May 2015 that continued until November 2016. She ended a full-time position with Employer B at the end of May 2015. She was able to work concurrently for Employers A and B in May 2015 because she worked her full-time position in the mornings and the part-time position in the evenings. (Item 3; Item 4 at 2, 5; AE C)

The record was confusing about Applicant's employment status between January 2015 and May 2015. Applicant did not disclose Employer B in her SCA. During her March 2021 security clearance interview (SI), she reported working for Employer B from May 2015 through November 2016. However, in a May 2022 response to DOHA-issued interrogatories, she indicated that the timeline she gave the investigator for Employer B was incorrect, but only corrected the end date and not the start date. (Item 3; Item 4 at 2, 5; AE C)

The record was also unclear about Applicant's employment status between August 2021 and September 2022. Applicant provided a December 31, 2021 paystub indicating that she had been employed by Employer C for several months. In her September 2022 FORM response, she reported a period of unemployment between about June and September 2022. The record is otherwise silent on the issue. (Item 5 at 17-18)

The SOR alleged 25 debts, including a \$7,398 car loan (SOR ¶ 1.a), eight federal student loans totaling \$23,978 (SOR ¶¶ 1.b – 1.h, and 1.i) and 11 medical accounts

totaling \$3,561 (SOR ¶¶ 1.k, 1.m, 1.o, and 1.r – 1.y). In her Answer, Applicant admitted each of the SOR allegations.

Applicant responded “no” to each question about her financial record and did not otherwise disclose any delinquent debts in her SCA. During her SI, she initially answered “no” to whether she had any financial delinquencies in the past seven years. After being confronted by the investigator with debts from her February 2021 credit bureau report (CBR), which were also alleged in SOR ¶¶ 1.a through 1.y, Applicant recognized some of the creditors and disputed others. She admitted that she was notified about a week or two prior to the SI about SOR ¶ 1.p but denied prior knowledge that any other debts were in delinquent status. (Item 3 at 29-30; Item 4 at 6-9)

Applicant acknowledged the car loan in SOR ¶ 1.a but did not consider it in delinquent status because she had been paying \$100 per month to the creditor. She intended to continue those payments until the debt was settled by her insurance company. The loan related to a car that was totaled in an August 2019 accident, which she described as a 20-car pile-up on the freeway. She was not the cause of the accident. (Item 4 at 7, 8)

Applicant acknowledged that she defaulted on the student loans in SOR ¶¶ 1.b through 1.h and 1.i but did not indicate the circumstances of the default. She did not consider the loans in delinquent status because she had been making payments via an automatic payroll deduction, which was halted due to COVID-19. She referenced her wages being garnished, but the record did not otherwise establish that the deduction was involuntary. She planned to contact the creditor to investigate the status of her accounts. She had no intent to default on her loans and planned to resume payments. (Item 4 at 8, 10).

Applicant denied that she was responsible for SOR ¶ 1.i, which was a charge for damage to the common area of her college dormitory. She attributed the damage solely to her roommates. She intended to dispute the debt the following day. She would only pay the debt if she were required to do so. Any such payment would be done via a payment plan. (Item 4 at 7-8)

Applicant denied any knowledge that SOR ¶ 1.j was in collection status prior to the day of the SI. She attributed the debt to her sister’s cell phone. Although Applicant’s plan included her sister’s phone, her sister apparently agreed to make the payments associated with her sister’s phone. Unbeknownst to Applicant, her sister lost the phone and fell behind with her payments. She planned to contact the creditor the following week to set up a payment plan to begin at the end of March. (Item 4 at 7)

Applicant did not recognize the medical accounts or creditors in SOR ¶¶ 1.k, 1.o, and 1.r through 1.y. She denied having any delinquent medical accounts because she had medical insurance and never received any bills for medical treatment. She recognized that the SOR ¶ 1.m creditor was the hospital to where she was sent via ambulance following the August 2019 accident but denied owing them any money. As of the SI, she did not have any then existing injuries from the accident. She intended to

investigate the accounts the following week and pay any that were deemed legitimate by March 30, 2021. (Item 4 at 6-7)

Applicant recognized SOR ¶ 1.n as past-due rent incurred when she broke her lease to relocate in July 2017. She was not able to pay it right away nor had she previously known how much she owed. She planned to contact the creditor the following week to set up a payment plan to begin at the end of March 2021. She attributed her delay in resolving this debt to not being smart with her finances at the time. Applicant did not explain what she meant by that statement. The record did not otherwise indicate that she had been irresponsible with respect to her finances. (Item 4 at 7)

Applicant recognized SOR ¶ 1.p as a carpet cleaning fee that she incurred at a former apartment due to having a dog. At some point prior to the SI, she made a verbal agreement with the creditor to resolve the debt via monthly payments of \$50, beginning at the end of March 2021. (Item 4 at 6)

Applicant acknowledged that she had car insurance with the creditor in SOR ¶ 1.q but denied owing any delinquent balances because she made her monthly payments via automatic payment. (Item 4 at 7)

After discussing the debts with which she was confronted, Applicant affirmed that no other circumstances were involved besides those she explained. She characterized her financial situation as okay. She asserted that she was actively trying to improve her financial wellbeing. She had begun budgeting differently, obtained a new job, and working a lot of overtime. She believed that these actions would allow her to avoid financial difficulties in the future. She planned to resolve any legitimate debts and expressed her intent to provide financial documents to the investigator at a later date. (Item 4 at 8-9)

After the SI, Applicant provided three documents to the investigator related to SOR ¶¶ 1.a, 1.r. and 1.q. A February 23, 2021 letter confirmed that, because of her cooperation, the SOR ¶ 1.a creditor agreed to settle the debt for \$7,500 to be paid in monthly installments of \$100, beginning February 26, 2021. A March 5, 2021 letter confirmed that she agreed to pay \$44.49 per month, beginning March 30, 2021, to resolve SOR ¶ 1.r. The SOR ¶ 1.q creditor confirmed via a March 12, 2021 letter that two \$25 payments were scheduled to be paid on March 30, 2021 and April 30, 2021. The record did not address whether the two payments were part of a larger settlement or resolved SOR ¶ 1.q in full. (Item 4 at 12-14)

The CAF issued interrogatories to Applicant on January 11, 2022. In response, she explained that she fell behind on bills due to “periods of times in my life where I fell on hard times;” and asserted, “I am able to work a job that will allow me to pay my debts off in a timely manner.” She included in her response three documents, including a duplicate of the SOR ¶ 1.a. letter previously provided to the investigator. A December 31, 2021 paystub showed a \$1,954 net pay for the period of December 13, 2021 through December 26, 2021, and a \$6,837 year-to-date net pay for an unspecified period. A January 11, 2022 letter confirmed that Applicant hired an agency to work with her “to repair inaccuracies” on her CBR. In response to questions about the status of her student

loans, she answered “no” to whether they had either been paid or any payment arrangements been made. She similarly responded to questions about the status of the medical accounts in the SOR, and the other debts in SOR ¶¶ 1.i, 1.j, 1.n, 1.p, and 1.q. (Item 5)

DOHA issued additional interrogatories to Applicant on May 27, 2022. In response, she asserted that she was still making the monthly payments towards SOR ¶ 1.a, which had reduced the balance to \$5,900. She also stated that she was “focusing on paying each creditor and removing those accounts from my report;” and that, since the SI, she has “shown significant improvement in relation to my finances along with the removal of previous accounts that were affecting my credit score.” She did not proffer any documents. (Item 4 at 2)

In her Answer, Applicant stated that she had been making consistent payments to reduce the balance of debt in SOR ¶ 1.a to \$5,000 and continued to work with the agency she hired in January 2022 to dispute the \$2,265 collection account in SOR ¶ 1.i. She asserted that the agency helped her dispute and delete from her CBRs the \$1,881 collection account in SOR ¶ 1.j, the \$840 collection account in SOR ¶ 1.n, and \$758 medical debt in SOR ¶ 1.o. She claimed that the \$735 collection account in SOR ¶ 1.p was “pending dispute,” and that the nine medical debts totaling \$1,865 in SOR ¶¶ 1.k and 1.r through 1.y were no longer showing on her CBRs. She did not proffer any documents. Nor did she provide an explanation or status update concerning her student loans, the \$938 medical debt in SOR ¶ 1.m, or the \$388 car insurance account in SOR ¶ 1.q. She concluded by stating:

I am dedicated to working on paying off my debt and understand that it is not just necessary to keep my security clearance but to better myself. My job is my livelihood and how I am able to maintain and continue to work on paying off my debt. I take pride in the work I do and would like to continue for as long as I can.

In her September 2022 FORM response, Applicant acknowledged that she defaulted on some of the payment plans she established and fell behind on some bills due to her recent period of unemployment (from approximately June 2022 through September 2022) caused by the withdrawal of her interim security clearance. She did not provide further details. She obtained a new job to help her catch up on her bills and resume her payment plans. She continued to engage the services of the agency that she hired in January 2022 to assist her. She provided a September 3, 2022 letter that confirmed the SOR ¶ 1.a creditor received payments totaling \$1,600, which reduced her balance to \$5,900 and that her next scheduled payment was due on September 30, 2022. (AE A-C)

A February 2021 CBR confirmed each of the SOR debts. SOR ¶¶ 1.a through 1.j, 1.l, 1.m, 1.p, and 1.q were reported on her January 2022 CBR. The 2021 CBR indicated that the medical debts in SOR ¶¶ 1.k, 1.m, 1.o, and 1.r went to collections after the 2019 accident, while those in SOR ¶¶ 1.s. through 1.y went to collections before the accident. The 2021 CBR noted Applicant’s dispute of SOR ¶¶ 1.i, 1.n, 1.p, and 1.r. through 1.y; and

the 2022 CBR noted Applicant's dispute of SOR ¶¶ 1.i, 1.j, 1.m, 1.p. and 1.q. The 2022 CBR revealed no new delinquent debts and that she was current in her monthly payments of \$30 and \$25 per month for two credit cards opened in September 2021 with credit limits of \$300 and \$200. (Items 6, 7)

Policies

"[N]o one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). "Substantial evidence" is "more than a scintilla but less than a preponderance." (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The concern under this guideline 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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

The record evidence and Applicant's admissions establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

I considered each of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline and find the following relevant:

- (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 of the dispute or provides evidence of actions to resolve the issue.

The 2019 accident that totaled Applicant's vehicle was beyond her control. The related car loan was her largest single debt. Despite not being at fault in the accident, she responsibly negotiated a settlement to repay the loan in February 2021. By September 2022, she had made 16 \$100 payments. Given the dates involved, the majority of the medical SOR debts appear related to the accident. Those that went to collections before the accident (SOR ¶¶ 1.s. through 1.y) totaled only \$129.

Applicant had reasonable bases to dispute SOR ¶ 1.i and all the medical SOR debts (SOR ¶¶ 1.k, 1.m, 1.o, and 1.r through 1.y). Her roommates caused the damage for which she was being charged. She had health insurance and never received any bills for medical treatment. She took action to resolve these disputes. Although SOR ¶ 1.i and one of the medical debts (SOR ¶ 1.m) appeared on her 2022 CBR, her disputes were noted therein. Her dispute of SOR ¶ 1.i was also noted on the 2021 CBR.

Applicant did not proffer any bases to dispute SOR ¶¶ 1.j, 1.n, or 1.p. She accepted responsibility for repaying her cell phone bill regardless of the agreement she had with her sister. She acknowledged that she owed past-due rent when she broke her lease and a carpet cleaning fee due to having a dog. During the SI, she expressed an intent to resolve each of these debts. In fact, she set up a payment plan for SOR ¶ 1.p prior to the SI. However, she did not proffer any evidence that she made any payments towards these debts.

Defaulting on any loan is security significant. The fact that Applicant defaulted on her federal student loans is of particular concern because she is seeking to gain a DOD clearance, which is a federal benefit. I, *sua sponte*, took administrative notice of the fact that, beginning March 13, 2020, due to the COVID-19 pandemic, the U.S. Department of Education has been providing emergency relief for federal student loans, including the suspension of loan payments and collections on defaulted loans. On August 24, 2022, President Biden extended this COVID-19 relief through December 31, 2022. On November 22, 2022, the U.S. Department of Education announced an extension of the pause on federal student loan repayment, interest, and collections, to sometime in 2023. This pause mitigates Applicant's post-pandemic inaction on her student loans. However, she acknowledged that she defaulted on her student loans prior to COVID-19. Because the record was insufficient to establish that her pre-pandemic payroll deductions resulted from an involuntary wage garnishment, I consider them sufficient evidence of a good-faith effort to resolve her student loans. She has demonstrated, through her consistent

payments towards SOR ¶ 1.a, that she will follow through with her promise to resume her student loan payments.

The record indicated that the agency Applicant hired in January 2022 is only assisting her with repairing her credit reports, not with paying debts or establishing payment plans. However, in addition to her budgeting differently and working overtime, the fact that she sought assistance from the agency demonstrates her commitment to improving her financial wellbeing. Moreover, her 2022 credit report revealed that, despite periods of unemployment that may have impacted her ability to repay existing delinquent debts, she avoided incurring any new debts and managed her current finances responsibly. Both before and after the SOR was issued, she demonstrated a track record of responsible action that leads me to conclude that she will follow through with her plans to fully resolve SOR ¶ 1.a and repay her student loans. I do not find the unresolved debts in SOR ¶¶ 1.j, 1.n, and 1.p., which total \$3,456, security significant considering the record as a whole. However, Applicant should be aware that, unless she has a reasonable basis to dispute a debt, the mere deletion of a debt from her credit report is not generally sufficient on its own mitigate the security concern associated with that debt.

The AGs do not require an applicant to immediately resolve or pay every debt alleged in the SOR, or to be debt free. Applicant implemented a plan to address the SOR debts and has made meaningful progress implementing that plan. None of her debts resulted from irresponsible spending. I conclude that her indebtedness is under control, unlikely to recur, and no longer casts doubt about her reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply to mitigate the Guideline F concerns.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by

the debts alleged in the SOR. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for access to classified information.

Formal Findings

Formal findings 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.y: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge