



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 20-03333
)	
Applicant for Security Clearance)	

Appearances

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

02/28/2023

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her unresolved delinquent debts. Her request for a clearance is denied.

Statement of the Case

On December 5, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively determine that it is clearly consistent with the interests of national security to grant Applicant's request for a security clearance.

On January 20, 2021, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The DCSA CAF issued the SOR pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive (SEAD) 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR (Answer) on January 21, 2021, and initially requested a decision based on the written record in lieu of a hearing. As provided for by paragraph E3.1.7 of the Directive, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM). On April 27, 2012, after receiving the FORM and discussing the case with Department Counsel, Applicant asked for a hearing before a DOHA administrative judge. The case was assigned to me on October 24, 2022, and I scheduled a hearing to be held on December 6, 2022, via online video teleconferencing. The parties appeared as scheduled, and Applicant testified in her own behalf. She also proffered Applicant Exhibits (AX) A and B. Department Counsel proffered Government Exhibits (GX) 1 – 3. I admitted all exhibits without objection. A transcript of the hearing (Tr.) was received on December 14, 2022.

Procedural Issues

The date originally listed on the SOR was January 20, 2020. A comparison of that date with the date of the digital signature of the DOD adjudicator on page 3, shows that the SOR was issued in 2021, not 2020. This discrepancy was corrected at hearing. (Tr. 10 – 12)

Also at hearing, Department Counsel moved to withdraw SOR allegations 1.r and 1.s. Without objection, I granted the motion. (Tr. 22 – 23)

Findings of Fact

Under Guideline F, the SOR (as amended) alleged that Applicant owed \$48,968 for 17 delinquent or past-due debts (SOR 1.a – 1.q). Eight of the debts alleged (SOR 1.a – 1.d, 1.l, 1.m, 1.p and 1.q) are for unpaid medical accounts. Five others (SOR 1.g – 1.k) are for unpaid student loans. The remaining allegations address unpaid commercial accounts. In her Answer, Applicant admitted all of the SOR allegations, and provided an explanatory statement. In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is 44 years old and is employed by a defense contractor, for whom she has worked, first as a temporary staffing hire then as a direct hire, since October 2019.

This is her first application for a security clearance. She and her husband have been married since September 2007, but they have separated several times. As of the hearing, they were living together but had experienced at least one separation of about four months after March 2020. She has two teenage children and one adult child, all of whom still live with her. Between 2010 and 2011, and in 2013, she attended community and state colleges but did not earn a degree. (Answer; GX 1; GX 2; Tr. 31)

Applicant did not disclose any adverse financial information as she was required to do in e-QIP Section 26 (Financial Record). As part of the ensuing background investigation, government investigators obtained two credit reports (CR) that documented all of the debts alleged in the SOR. On January 28, 2020, Applicant was interviewed about her finances by a government investigator. The summary of that interview further documents the debts alleged in the SOR. A CR obtained in November 2022 documents the debts at SOR 1.f and 1.e. (GX 1 – 5) Applicant's exhibits consist of an unexecuted U.S. Department of Education "Income-Driven Repayment (IDR) Plan Request" (AX A), and copies of email correspondence between Applicant and a credit repair firm she used in 2021 (AX B).

Applicant has been unemployed at least four times since 2009, the longest such period being between 2009 and 2013, when she had to leave work to care for her elderly mother, who could not afford to obtain skilled nursing assistance. Most recently, she was unemployed for about five months before she started working for her current employer. Most of the time when she has worked, she either has had employer-provided medical insurance or was able to qualify for Medicaid. When she was out of work, she had to rely on her husband's Medicaid; however, during their separations, which were not documented through the courts, she was not able to use his Medicaid. According to her testimony, the state in which she lives requires a married person to show a legal separation to qualify for public assistance, such as Medicaid and food stamps. (GX 1; GX 2; Tr. 31 – 34, 48 – 50)

Applicant obtained the student loans alleged in SOR 1.g – 1.k to fund tuition for her college studies. When she was interviewed by a government investigator in January 2020, she acknowledged that those accounts became delinquent around 2017, and that she was relying on the diversion of her federal income tax refunds to help pay down her student loans. However, she testified that she has not filed a federal income tax return for the past three years on advice of her tax preparer. Thus, she has not received refunds for those years that could be applied to her student loans. According to the most recent CR available, she now has a single student loan account for \$23,369, roughly the same as the total of the student loans alleged at SOR 1.g – 1.k. The account was opened in October 2021 and is not listed as delinquent or past-due; however, there are no payments reflected for that account. Applicant testified she first addressed her student loans about four years ago. In September or October 2022, she submitted an IDR Plan Request to the Department of Education. She has not yet received a response to her request, and she has not otherwise made any loan payments. (GX 2 – 5; AX A; Tr. 35 – 40, 44 – 45)

Applicant's medical debts are for services she received at times when she had no medical insurance. She has not made any payments directly to those creditors. In mid-2021, she worked with a credit repair firm and made two payments through them. However, after less than six months she stopped using them because she did not see any progress in either addressing her debts or cleaning up her credit history. (GX 2; AX B; Tr. 42 – 43)

Applicant has not made any payments on the commercial debts alleged at SOR 1.e, 1.f, 1.n, and 1.o. As to SOR 1.e, she testified that she does not recognize that creditor; however, during her PSI, she identified it as a loan (original amount of \$497) that became delinquent in 2016 when she was out of work. (GX 2)

Applicant attributes her financial problems to a combination of life events, such as her unstable marriage and periods of unemployment, and her poor financial management in the past. She testified that she understands the importance of resolving her debts, but she is not presently able to do so. She lives "check to check" and cannot afford to make any payments to her creditors. Recent credit information shows she incurred a past-due cellphone bill because her adult son failed to pay an account she opened for him using her credit. In February 2022, she co-signed an auto loan for her husband with a \$618 monthly payment that became past due by at least one month as of November 2022. (Answer; GX 2; GX 5; Tr. 46 – 47)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly

consistent with the national interest for an applicant to either receive or continue to have access to classified information. (See *Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (*Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (*Egan* at 531; see AG ¶ 2(b))

Analysis

Financial Considerations

The Government met its burden of producing sufficient, reliable information to support all of the SOR allegations that Applicant accrued significant past due or delinquent debt that is still outstanding. This information reasonably raises a security concern about Applicant's finances that is articulated at 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Available information also requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

None of these mitigating conditions can be applied based on this record. Applicant's financial problems are recent and multiple. She still owes nearly \$49,000 for eight unpaid debts that have accrued since 2016. Although it appears that she incurred her debts through circumstance beyond her control – periods of unemployment, lack of medical insurance, and periods of marital separation – Applicant did not establish that she acted responsibly in the face of those circumstances. Although not alleged in the SOR, information developed during the hearing shows she recently has made ill-advised financial decisions, such as co-signing a car loan that is now past-due and using her credit information to open her son's cellphone account that is now delinquent. She also has not filed income tax returns for the past three tax years, which contradicts her stated reliance on income tax refund diversions to help reduce her student loan debt. Further, Applicant used a credit assistance firm to address her medical debts, but that approach lasted less than six months and did not produce any identifiable improvements in her financial condition. Finally, Applicant has not made any payments to her creditors. She did not present a plan to begin resolving her debts, and while she has applied for relief from the U.S. Department of Education, information about that initiative is incomplete, at best.

Applicant did not present sufficient useful or encouraging information that shows she can resolve her debts or will manage her personal finances in a way that would help her avoid such financial problems in the future. On balance, I conclude Applicant has not

met her burden of persuasion and that she has not mitigated the security concerns established by the Government's information.

I also have considered the potential application of the whole-person factors at ¶ 2(d). The record evidence as a whole presents significant remaining doubts about Applicant's suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.q:	Against Applicant
Subparagraphs 1.r and 1.s:	Withdrawn

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge