



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 21-00953
)	
)	
Applicant for Security Clearance)	

Appearances

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

03/24/2023

Decision

HOGAN, Erin C., Administrative Judge:

On October 5, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On October 8, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. Applicant supplemented the SOR answer at a date unknown sometime after the original SOR Answer and the date of the hearing. (Gov 1) On April 8, 2022, another administrative judge was assigned the case. The case was transferred to me on November 3, 2022. On November 22, 2022, a Notice of Hearing was issued, scheduling the hearing on January 11, 2023. The hearing was held as scheduled. During the hearing, the Government offered nine exhibits which were admitted without objection as Government (Gov) Exhibits 1 - 9. Applicant testified and offered four exhibits which were admitted without objection as Applicant Exhibits (AE) A - D. The record was held open until January 25, 2023, to allow the Applicant to submit additional exhibits. Applicant timely submitted a 4-page document which was admitted,

without objection, as AE E. I granted Applicant's request to extend the time for her to submit post-hearing exhibits to February 7, 2023. Applicant timely submitted five exhibits which were admitted without objection as AE F – AE J. The transcript was received on January 23, 2023. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admits the SOR allegations in ¶¶ 1.j – 1.m, 1.w, and 1.x. She denies the SOR allegations in ¶¶ 1.a – 1.i, and 1.n – 1.v with some explanations.

Applicant is a 41-year-old employee of a DOD contractor who seeks a security clearance. She has held a security clearance for over 22 years both on active duty and as a contractor. She served on active duty in the United States Army from May 1999 to November 2008. She served two overseas tours in Korea and Iraq. After separating from the Army in 2008 with an honorable discharge, she served in the reserve until 2014. She also consistently worked for various defense contractors since 2009. She was employed by her current sponsor in 2021. At the hearing, she disclosed that since February 2022, she has worked as a contractor for a state agency. During the hearing, Department Counsel confirmed Applicant was still being sponsored for a security clearance. She is a high school graduate and has some college credit. She is divorced but is engaged to be married and currently resides with her fiancé, his 18-year-old daughter, and her 11-year-old nephew. (Gov 1; Gov 2; Tr. 13-19, 28, 35, 46-48)

(Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations for the purpose of protecting Applicant's and her family's privacy. The cited sources contain more specific information.)

Financial Considerations

The SOR alleged that Applicant has a history of financial irresponsibility. The SOR alleged 22 delinquent accounts, with an approximate total balance of \$50,950. The SOR also alleged Appellant filed for bankruptcy on two occasions. The first was a Chapter 7 bankruptcy filed in January 2002. The debts were discharged in April 2002. (SOR ¶ 1.w: Gov 3) The second bankruptcy was a Chapter 13 bankruptcy which was filed in May 2010. The Chapter 13 bankruptcy was dismissed in January 2012 for failure to make payments. (SOR ¶ 1.x: Gov 4)

Applicant filed for Chapter 7 bankruptcy in 2002 when she was on active duty. She purchased a car for her mother. Applicant purchased the car in her name, but her mother agreed to make the payments. Her mother did not make the car payments and the car was repossessed. Applicant's wages were ultimately garnished. The garnishment took most of her paycheck. She was only 19 at the time. Her Sergeant Major suggested that she file for bankruptcy. (SOR ¶ 1.w: Tr. 20-22; Gov 3)

In May 2010, Applicant filed for Chapter 13 bankruptcy. She made the payments on the plan until she encountered medical problems which caused her to leave work.

Applicant's mother moved into her home. The Chapter 13 was dismissed in 2012. (Gov 4) Applicant occasionally cared for her nephews which caused additional expenses. (Tr. 24-27) In 2014, her 15-year-old nephew was murdered. A misunderstanding caused her to be let go from her employment, but she was able to find another job. Applicant continued to care for her mother and her younger nephew. Her mother passed away unexpectedly in 2017, which caused additional expenses. Applicant testified she had a choice to pay the rent or the credit card bills. She chose to pay the rent. Her priority was to make sure she and her nephew had a roof over their heads. (SOR ¶ 1.x: Tr. 24-38)

The status of the debts alleged in the SOR are as follows:

SOR ¶ 1.a: \$11,325 delinquent account placed for collection. Applicant claims she was the second signer on this car loan. The car was repossessed. The debt is not paid. She is trying to settle this account. The debt remains unresolved. (Tr. 40, 56; Gov 7 at 2)

SOR ¶ 1.b: \$10,172 balance due as a result of a car repossession. Applicant testified that this was a voluntary car repossession. She claims the car was a lemon and she turned it in after repeatedly having to have the car repaired. She believes that she does not owe anything, but did not provide documentation to verify that the account is resolved. The debt remains unresolved. (Tr. 56-57; Gov 7 at 6; Gov 8 at 4)

SOR ¶ 1.c: \$9,818 balance due as a result of a car repossession. Applicant testified that this was a voluntary car repossession. She claims the car was a lemon and she turned it in after repeatedly having to have the car repaired at the dealership. She believes that she does not owe anything, but did not provide documentation to verify that this account is resolved. The debt remains unresolved. (Tr. 57-58; Gov 7 at 6; Gov 8 at 6)

SOR ¶ 1.d: \$3,582 delinquent medical account that was placed for collection. Applicant testified that this debt was no longer on her credit report. The debt is listed on a credit report, dated April 21, 2021. It was not resolved at the time, but it noted Applicant disputed the debt. It does not appear to be on Applicant's most recent credit reports dated in early January 2023. (Tr. 59; Gov 6 at 8; Gov 7 at 2; Gov 8 at 2, AE A-C)

SOR ¶ 1.e: \$3,176 charged-off furniture store account. Applicant rented this furniture as rent to own. She notified the company that she was moving and they could pick up the furniture. The furniture store never picked up the furniture. The debt remains unresolved. (Tr. 59-60; Gov 7 at 2; Gov 8 at 7)

SOR ¶ 1.f: \$2,287 student loan account placed for collection. Applicant provided proof that her debt resolution company was able to successfully dispute this debt with the credit reporting agencies. It was removed from her credit report. It is not clear whether Applicant paid this loan. (Tr. 60; Gov 6 at 9-10; Gov 7 at 2-3; Gov 8 at 5; AE H at 2)

SOR ¶ 1.g: \$1,626 student loan account placed for collection. Applicant provided proof that her debt resolution company was able to successfully dispute this debt with

the credit reporting agencies. It was removed from her credit report. It is not clear whether Applicant paid this loan. (Tr. 60; Gov 6 at 9-10; Gov 7 at 3; Gov 8 at 5; AE H at 2)

SOR ¶ 1.h: \$1,319 medical account that was placed for collection. Status unknown. (Tr. 59; Gov 7 at 3; Gov 8 at 2)

SOR ¶ 1.i: \$996 medical account that was placed for collection. Status unknown. (Tr. 59; Gov 7 at 3; Gov 8 at 2)

SOR ¶ 1.j: \$703 charged off utility account. Applicant intends to pay this debt but did not submit proof of payment or resolution. The debt remained unresolved at the close of the record. (Tr. 61; Gov 7 at 3; Gov 8 at 4)

SOR ¶ 1.k: \$460 charged off debt owed to a bank. Applicant provided proof that her debt resolution company successfully disputed this account to the credit reporting agencies. It was removed from her credit report. (Gov 7 at 3; Gov 8 at 4)

SOR ¶ 1.l: \$431 delinquent account owed to a bank placed for collection. Status of this account is unknown. (Tr. 61; Gov 7 at 3; Gov 8 at 4)

SOR ¶ 1.m: \$316 charged off. Status of the debt is unknown. (Gov 6 at 13; Gov 7 at 4; Gov 8 at 3)

SOR ¶ 1.n: \$170 medical account that was placed for collection. Status unknown. (Gov 7 at 4; Gov 8 at 2)

SOR ¶ 1.o: \$166 medical account that was placed for collection. Status unknown. (Gov 7 at 4; Gov 8 at 2)

SOR ¶ 1.p: \$123 medical account that was placed for collection. Status unknown. (Gov 7 at 4; Gov 8 at 2)

SOR ¶ 1.q: \$102 medical account that was placed for collection. Status unknown. (Gov 7 at 5; Gov 8 at 2)

SOR ¶ 1.r: \$69 medical account that was placed for collection. Status unknown. (Gov 7 at 5; Gov 8 at 2)

SOR ¶ 1.s: \$63 medical account that was placed for collection. Status unknown. (Gov 7 at 5; Gov 8 at 2)

SOR ¶ 1.t: \$50 medical account that was placed for collection. Status unknown. (Gov 7 at 5; Gov 8 at 2)

SOR ¶ 1.u: \$1,250 delinquent furniture store account that was charged off. Applicant claims she purchased furniture for her mother. Her mother passed away and

her sister took the furniture. She hopes to settle this account. Status of the account is unknown at the close of the record. (Tr. 63; Gov 7 at 5; Gov 8 at 7)

SOR ¶ 1.v: \$2,746 delinquent cell phone account placed for collection. Applicant disputes this account. She transferred to another cell phone company and does not believe the debt should be so large. Applicant's debt resolution company successfully disputed this account with the credit reporting agencies. It was removed from her credit report. (Tr. 63; Gov 8 at 5; AE H at 2)

During the hearing, Applicant indicated that she owes state income taxes for tax years 2012 and 2017. She is in process of resolving her delinquent state income tax debts. She claims both state income tax debts are almost paid off. (Tr. 30-31; Gov 5) She has not filed her federal income tax returns for tax year 2021. She hired a person she knows to prepare and file her federal income taxes for 2020 and 2021. She never heard from her friend about the status of the tax filings. She had to track her down to retrieve her federal income tax documents. She filed her federal income tax returns for 2020, but not 2021. She intends to file her 2021 federal income tax returns with her 2022 federal income tax returns. She believes she might owe the Internal Revenue Service (IRS) money, but she is unsure of the amount. (Tr. 30-35) Applicant's state and federal income tax issues are not alleged in the SOR. I cannot consider them under matters of disqualification, but will consider her income tax problems under matters of extenuation and mitigation.

In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citations omitted)). The non-SOR allegations will not be considered except for the five purposes listed above.

During the hearing, Applicant estimated that her monthly income is \$12,760. Her monthly expenses total \$8,400 and she has \$4,000 left over each month after expenses. She puts the remainder in a savings account that she uses for emergencies. She will also use the money to settle delinquent accounts. (Tr. 65; AE D) Applicant testified her current employer does not provide health insurance. She recently received a medical diagnosis and has to pay for her prescription drugs out of pocket. (Tr. 49)

Applicant wants to get her finances in order. She hired a debt resolution company to help with disputing the debts. (AE F; AE H) She and her fiancé hope to

purchase a home after they are married. She is not focused on her older debts. She was advised by the debt resolution company to focus on her more recent debts because the older debts should have dropped off her credit report based on the statute of limitations. She is focused on her current bills so she can support herself and her nephew. (Tr. 62)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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).

Guideline F: Financial Considerations

The security concern relating to the guideline 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. 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

Applicant has a long history of financial problems starting with a Chapter 7 bankruptcy which was discharged in April 2002, and a Chapter 13 bankruptcy which was filed in May 2010 and dismissed in January 2012 for failure to make payments. The SOR alleges 22 delinquent debts with an approximate total balance of over \$50,000. AG ¶¶ 19(a) and 19(c) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce

evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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
- (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.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing.

AG ¶ 20(b) partially applies because Applicant's financial situation was impacted by her decision to care for her mother and nephews. Applicant was also adversely affected by a divorce and several health issues. These circumstances were beyond Applicant's control and adversely affected her ability to pay her bills. However, this mitigating condition is given less weight because Applicant has not demonstrated she acted responsibly under the circumstances. Applicant has not attempted to resolve any of the debts alleged in the SOR. She is waiting for the statute of limitations to expire so they will be uncollectible. For this reason, AG ¶ 20(b) is given less weight.

AG ¶ 20(c) partially applies. Applicant initially entered into an agreement with a debt company who failed to make progress resolving the debts to Applicant's satisfaction. However, it is unclear whether the debt company provided financial counseling to Applicant which would help with establishing a budget. It appears the debt

company was more focused on disputing debts rather than helping Applicant establish a plan to repay her delinquent debts.

AG ¶ 20(d) does not apply because Applicant has not demonstrated that she is making a good-faith effort to resolve her delinquent debts. Passively waiting for the statute of limitations to pass is not considered a good-faith effort to resolve one's delinquent debts. Credit is given to Applicant's attempts to resolve her state tax debts which were not alleged in the SOR.

AG ¶ 20(e) applies to the debts alleged in SOR ¶¶ 1.d, 1.f, 1.g, 1.k and 1.v. Applicant provided proof these debts were successfully disputed and removed from her credit report.

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(a):

- (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 active and reserve service in the United States Army. I considered her honorable discharge. I considered her many years of employment as a Department of Defense contractor. I considered Applicant's support and care of her mother and her nephews. I considered that she is raising one of her nephews who lives with her.

However, I also considered Applicant's long history of financial problems. She continues to have financial issues to include delinquent state income taxes and unfiled federal income tax returns for tax year 2021. While she has taken steps towards resolving her financial issues, they have not been sufficient to stabilize Applicant's financial situation. She has not developed a meaningful track record of debt management. This raises issues about her trustworthiness and reliability.

I considered the potentially disqualifying and mitigating conditions as well as the facts and circumstances surrounding this case. Security concerns are not mitigated at this time.

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: AGAINST APPLICANT

Subparagraphs 1.a-1.c, 1.e, 1.h-1.j, and 1.l-1.u: Against Applicant

Subparagraphs 1.d, 1.f, 1.g, 1.k and 1.v: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge