



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



In the matter of:)
)
) ISCR Case No: 20-02436
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

03/15/2023

Decision

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the Financial Considerations guideline. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On December 3, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). Applicant responded in a January 25, 2022 Answer to the SOR, and requested that her case be decided by an administrative judge on the written record without a hearing. The Answer documents in the case file appear to be two separate responses, with one identifying debts without reference to subparagraphs of the SOR, and the other listing subparagraph numbers that did not align with those in the SOR.

On February 22, 2022, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on February 28, 2022, and received by her on April 27, 2022. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

In the FORM, Department Counsel stated, "The Government, pursuant to ¶ E3.1.13. of DoD Directive 5220.6, amends the SOR to include subparagraphs 1.t. through 1.w. to read as follows: . . .," followed by proposed language alleging that four additional credit accounts totaling \$14,749 had been placed for collection and remained delinquent. Department Counsel requested that Applicant provide an answer to these new allegations in her response to the FORM, and that if she failed to do so that the administrative judge find her silence to be a denial of the new allegations. ¶ E3.1.13. of DoD Directive 5220.6 deals with advance provision of case documents to the other party; not with amending the SOR, which is covered by ¶ E3.1.17. That provision says that the administrative judge, not the department counsel, may amend the SOR at the hearing "to render it in conformity with the evidence admitted or for other good cause." Accordingly, the SOR has not been amended by Department Counsel's purported action in the FORM. Evidence of the additional collection accounts will be considered solely for purposes of analyzing mitigating conditions and whole-person factors.

Applicant did not respond to the FORM with any additional information, did not object to its contents, and did not request additional time to accomplish either act. On August 4, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. Items 1 through 6 are admitted into evidence.

Findings of Fact

On the page of her Answer that listed subparagraphs, Applicant admitted all allegations except what she described as ¶¶ 1.d, 1.e, 1.i, 1.q, 1.r, and 1.s, which she denied. In what apparently was the original first page of her Answer, she did not list subparagraphs, but admitted or denied all but one of the alleged debts by describing the creditor and debt amount. She did not mention the single debt listed on the first page of the SOR (¶ 1.a). The Facts section of the FORM simply recited Applicant's admissions and denials as stated in the Answer page that contained subparagraph notations. However, comparison of the two Answer pages and the SOR showed that Applicant mislabeled the subparagraphs on that page. By merging the responses from the two Answer pages with the SOR's subparagraph allegations, I determined that she actually admitted to all of the SOR allegations except SOR ¶¶ 1.a, 1.c, 1.j, 1.k, 1.p, and 1.q, which she denied. Her admissions are incorporated into these findings of fact. (Item 1; Item 2.)

Applicant is 45 years old. She earned a high school diploma in 1996, an associate degree in 2001, and certification diploma in medical billing and coding in 2006. She never served in the U.S. military or civil service. She has held a Secret security clearance since 2008. She has never married and has no children. She has worked as a security officer

for a security guard and patrol service company since 2011, after performing similar duties for other contract security companies since at least 2001 without any periods of unemployment. She has always lived in her parent's home, except for a one-year period in 2011 and 2012 when she rented an apartment in a nearby town. (Item 3.)

Applicant said that her financial problems began after she underwent surgery for a serious chronic medical condition in July 2018, and was on unpaid leave for five and a half weeks while she recuperated. She said that she lived off her credit cards while not receiving paychecks, then fell behind on her debts and didn't know what to do, although she had always paid her bills before her surgery. She did not submit a budget from which to determine her living expenses while living in her parent's home, nor otherwise explain how she accumulated over \$49,000 in delinquent credit card debt while off work for just over a month. (Item 2; Item 3; Item 4; Item 5; Item 6.)

The status of the 22 SOR-alleged debts, totaling \$83,892, is as follows:

SOR ¶¶ 1.a – 1.d, 1.p – 1.s: After returning to work in August 2018, Applicant incurred these eight delinquent medical debts, totaling \$3,709, between January 2019 and November 2019. The individual amounts due range from \$78 to \$1,773. She admitted owing four of them, totaling \$3,316. She denied the other four, totaling \$393, because she said she didn't receive those bills. The existence of all these debts is documented in record credit reports, and she submitted no evidence of any effort to contact or repay the creditors. These debts remain unresolved. (Item 2; Item 4; Item 5.)

SOR ¶¶ 1.f – 1.h, 1.j – 1.o: Applicant last made timely payments toward five of these nine delinquent credit card accounts during July or August 2018, and payments toward the remaining four between December 2018 and November 2019. They have all been charged off by the creditors, with balances ranging from \$1,343 to \$10,648, and totaling \$49,215. Applicant said, in her Answer, that she repaid two of these debts: SOR ¶ 1.k in 2019 (\$1,343), and SOR ¶ 1.j in 2021 (\$8,455); but provided no documentation to corroborate this claim. Applicant's February 22, 2022 credit report stated that the ¶ 1.j account was paid in September 2021, and it has a \$0 balance. However, the ¶ 1.k account was last reported on February 15, 2022, with an unpaid \$1,343 balance on that credit report. She made no apparent effort to resolve the remaining seven delinquent credit card accounts, which remain outstanding. (Item 2; Item 4; Item 5; Item 6.)

SOR ¶¶ 1.e, 1.i: Applicant admitted that she owes two delinquent retailer charge accounts totaling \$1,544. These accounts were placed for collection in August 2019 and January 2020, after she stopped paying them in February and May 2019. She did not claim to have made any effort to resolve either account. (Item 2; Item 4; Item 6.)

Applicant's February 2022 credit report listed three additional delinquent debts that were not alleged in the SOR. These debts total \$13,190 and were placed for collection by three different banks between January and September 2020 after last payments were made in June or October 2019. These will be considered only in connection with mitigation and whole person analysis. (Item 4.)

On January 10, 2018, Applicant entered into a \$104,800 joint mortgage loan, presumably with her 71-year-old mother whom she lives with and cares for in the longtime family home. She did not explain the uses to which these funds were put, but her credit report shows that in July 2019 she paid off the seven-year \$41,354 car loan she had opened in May 2017, rather than use those funds to repay her SOR-listed medical or consumer credit debts. (Item 4.)

The record contains no evidence concerning whether Applicant sought financial counseling, her job performance, trustworthiness, or character in a professional setting. It is also silent with respect to her track record in handling sensitive information and observation of security procedures. I was unable to evaluate her credibility, demeanor, or character in person, since she elected to have her case decided without a hearing.

Policies

This national security eligibility action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified or sensitive 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information.

Finally, as stated in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since undergoing surgery in July 2018 and being on unpaid leave for five and a half weeks thereafter, Applicant incurred the 19 delinquent debts alleged in the SOR, which total almost \$54,500. In September 2021, she repaid the \$8,455 credit card debt alleged in SOR ¶ 1.j, but the others remain unresolved. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial delinquencies:

- (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.

Applicant failed to establish mitigation under any of these conditions. All but one of the multiple delinquent debts of concern remain unresolved, demonstrating current unreliability and ongoing potential for financial coercion. She provided no evidence to corroborate her claim that she repaid the \$1,343 debt alleged in SOR ¶ 1.k, or that she obtained and is following professional guidance to establish financial responsibility. There

are no documented indications that the problem is being resolved or is under control. Applicant admitted incurring these debts, which are fully documented in the record credit reports, and offered no substantiated basis to dispute their legitimacy.

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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and accountable security guard who defaulted on about \$54,500 in voluntarily incurred debt listed in the SOR, and more than \$13,000 in later delinquencies. She repaid one \$8,455 credit card debt, but documented no attempt, workable plan, or available resources to resolve her remaining delinquent debts since she resumed her current employment after five and a half weeks of unpaid medical leave during July and August 2018. There remains significant potential for pressure, coercion, exploitation, or duress, which is likely to continue. Applicant failed to meet her burden to mitigate the security concerns arising under the Financial Considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k through 1.s:	Against 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 or continue Applicant's national security eligibility for access to classified information. Clearance is denied.

DAVID M. WHITE
Administrative Judge