



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



In the matter of:)
)
) ISCR Case No. 22-02276
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Kent Esq., Department Counsel
For Applicant: *Pro se*

03/30/2023

Decision

DAM, Shari, 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 the Case

On November 18, 2022, the Department of Defense Consolidated Adjudications Facility (DoD) issued a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). On December 5, 2022, Applicant answered the SOR in writing and elected to have her case decided on the written record in lieu of a hearing. (Item 2)

On December 21, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and she received it on December 30, 2022. The FORM notified her that she had an opportunity to file objections and submit information in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit

any documents or file objections to the Government's evidence. Hence, Items 1 through 7 are admitted into evidence. I received the case file on March 27, 2023.

Findings of Fact

Applicant admitted the sole allegation in the SOR with explanations. Her admission is incorporated into the findings of fact. (Item 2) After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old and is a high school graduate. She is unmarried but has cohabitated with a person periodically since 2008. She has four children, ages 18, 15, 12, and 9 years old. In June 2022, she started a position with her current employer, a defense contractor, and she submitted a security clearance application (SCA) for the first time. (Item 3)

In her SCA, Applicant reported that prior to this position, she had been unemployed since February 2022. Before that, she worked for two insurance agencies from September 2016 to September 2021. (Item 2)

In September 2022, the Government sent Applicant a set of financial interrogatories and inquired about a delinquent account owed to a bank in the amount of \$22,167 for a personal loan. According to her July 2022 credit bureau report (CBR), she took out the loan in July 2018 for \$35,000. It went into collection in May 2022 with a balance of \$22,167. (Item 5 at 2)

In response to those interrogatories, Applicant stated that in 2020, her work hours were decreased, which caused her financial problems. (Item 4) She also included a copy of her monthly budget that stated her net pay was \$2,904, her expenses were \$1,674, and payments on other debts were \$1,219, leaving \$11 remaining at the end of the month. She was making payments on eight credit cards, which had a combined balance of \$22,317, and a \$214,000 mortgage. She noted that her partner does contribute to some expenses. (Item 4 at 9)

Based on Applicant's admission and the July 2022 CBR, the SOR alleged the \$22,167 delinquent personal loan. Applicant acknowledged that she had been unable to pay the debt because of a lack of money and stated that she has not heard from the creditor since 2020. She claimed the creditor refused to work out a payment plan. She intends to establish a plan if she obtains a security clearance. (Item 7)

Policies

The national security eligibility action was taken under Executive Order (EO) 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 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 a security clearance.

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. Likewise, I have avoided drawing inferences grounded 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 information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 describes conditions that could raise security concerns. Two may be potentially disqualifying in this case:

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

Applicant has a debt from 2020 that she has been unable to resolve. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 includes conditions that could mitigate security concerns arising under this guideline. 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions. Applicant's delinquent debt has been outstanding since 2020 and there is no evidence that she has contacted the creditor since then. It continues to be unresolved, casting doubt on Applicant's reliability. AG ¶ 20(a) does not apply. Applicant attributed her delinquent debt to a period in 2020 when her work hours were decreased. Those were circumstances beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She did not provide evidence to demonstrate that she attempted to responsibly manage or resolve her debt since 2020. AG ¶ 20(b) does not apply.

Applicant did not provide evidence that she participated in financial counseling. There is insufficient evidence from which to conclude that her delinquent debt is under or coming under control. AG ¶ 20(c) does not apply. There is no evidence that she communicated with the creditor or tried to establish a plan to resolve the debt, despite receiving the SOR in November 2022. After being notified of the Government's concerns in the December 2022 FORM, she did not submit evidence of an attempt to resolve the matter with the creditor. AG ¶ 20(d) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 view of all facts and circumstances surrounding this case. To date, Applicant has not taken action to resolve her large personal loan that is delinquent and in collection. She has not established a track record of responsible financial management. Applicant failed to meet her burden of persuasion to mitigate the security concerns raised under the guideline for financial considerations.

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
Subparagraph: 1.a:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge