



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



In the matter of:)	
)	
)	ISCR Case No. 21-01462
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from her delinquent and charged-off debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 19, 2020. On September 3, 2021, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant answered the SOR on October 27, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 6, 2022.

The hearing convened on November 28, 2022. Department Counsel submitted Government Exhibits (GE) 1-3, which were admitted in evidence without objection. Applicant did not present any documentation at the hearing. After the hearing, I held the record open for two weeks to provide Applicant with the opportunity to submit documentary evidence, and she did not submit anything.

Findings of Fact

In her answer, Applicant admitted all the SOR allegations (§§ 1.a-1.f). Her admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 37 years old. She has never been married and has no children. She attended some college classes in about 2015. She has worked in shipbuilding for a defense contractor for about four years. (Tr. 16-18; GE 1)

The SOR alleges six delinquent debts totaling \$20,433, including \$5,482 of student loans in collection, \$304 of medical debt in collection, and \$14,647 for a charged-off auto loan. The status of the allegations is as follows:

SOR §§ 1.a and 1.b are student loans in collection for \$3,365 and \$2,117, respectively. Applicant reported that she attended some college classes in about 2015. She stated that after she completed these classes, she never made any payments on her student loans, and admitted she has no plans to make any payments. These loans are unresolved. (Tr. 23-31; GE 2, 3)

SOR §§ 1.c-1.e are medical debts placed for collection for \$169, \$69, and \$66, respectively. Applicant stated that these debts were either copays or deductibles. She asserted that she would consider paying the two small debts but has not taken any action on them. These debts are unresolved. (Tr. 24-24; GE 2, 3)

SOR § 1.f is an auto loan that was charged off for \$14,647. Applicant stated that in about 2015, she co-signed a loan for a new car for her sister. Her sister made payments for a few months, but then stopped and the car was repossessed. She reported that she has no idea what ultimately happened to the car. She stated that she has not taken any action to resolve this debt and has no plans to pay it. This debt is unresolved. (Tr. 25, 28-29, 36; GE 2, 3)

Applicant has not had any credit counseling and did not submit a budget. She claimed that she brings home about \$3,200 monthly and has about \$2,000 in monthly expenses. She reported that in early 2021, she got a random text message from a company offering to assist her with "updating her credit." She first thought it was a scam, but looked up the company on the internet. She paid them about \$1,000 over seven months to look at her debt and "update her credit." They did not make any debt payments on her behalf. She reported that she is not sure what they did for her and did not ask a lot of questions. She stated that she wants to purchase a home, so she hoped this service would make it easier for her to get a mortgage. (Tr. 18-23, 33)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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."

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

Section 7 of EO 10865 provides that adverse 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).

Analysis

Guideline F, Financial Considerations

The security concern 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 guideline notes two conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The SOR allegations are established by the credit reports and Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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; and
- (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.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts are resolved, or that any became delinquent under such circumstances that are unlikely to recur. Her failure to pay delinquent and charged-off debt is both long-term and recent, as well as ongoing and unresolved. This continues to cast doubt on her current reliability, trustworthiness, and good judgment.

Applicant did not provide sufficient evidence showing that her debts occurred largely due to circumstances beyond her control or that she acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

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.

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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. She did not provide sufficient evidence to mitigate the security concerns under Guideline F arising out of her delinquent and charged-off debts. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for eligibility for access to classified information in the future.

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.f:

Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge