



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



In the matter of:)	
)	
)	ISCR Case No. 20-02694
)	
Applicant for Security Clearance)	

Appearances

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

05/25/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On December 21, 2021, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on December 23, 2021, and requested a hearing before an administrative judge. On February 8, 2022, the original SOR was substituted with an amended SOR. Applicant answered the amended SOR on February 23, 2022.

The case was assigned to me on February 1, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 6, 2023, scheduling the hearing for April 11, 2023, by Microsoft Teams. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 9. Applicant testified and did not offer any documentary evidence. There were no objections to the exhibits, and they were admitted into evidence. The record remained open until April 25, 2023, to permit Applicant time to provide documentary evidence. Applicant offered exhibits (AE) A through L. There were no objections and all were admitted into evidence and the record closed. DOHA received the hearing transcript on May 1, 2023.

Findings of Fact

Applicant admitted all the allegations in the amended SOR. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. She attended college from 2015 to 2017 but did not earn a degree. She has two children, ages 16 and 6. She receives \$480 monthly in child support for her younger child and no support for the other child. She has worked for federal contractors since 2010, except from October 2017 to October 2018 when she did not work because she stayed home with her younger child. She was supported by her boyfriend during this time and lived with her sister. She explained that she was uncomfortable sending her child to daycare because he initially had some medical needs but admitted later this was her choice. She has worked for her present employer since October 2018. She also had a part-time job working three days a week, along with her full-time job in 2021, but not 2022. At the time of her hearing, she did not have a second job. Post-hearing, she stated that she was hired for a second job and was now earning from the two jobs approximately \$129,000 annually. (Tr. 15- 21, 65; GE 9; AE A, L)

Applicant began experiencing financial difficulties after the birth of her second child and when she was not working. She used credit cards to supplement her income. Also, during a period of time, she was the only one working when her boyfriend was unemployed. She now lives with her sister and they share expenses. She completed a security clearance application in February 2017 and disclosed some of her delinquent debts. She was interviewed by a government investigator in May 2019 and acknowledged she had delinquent debts. She was unable to maintain her home and pay her bills so she began using credit cards. Some of them became delinquent. She told the investigator that she had not made payment arrangements to satisfy the debts. She was pursuing a second job and intended to satisfy the debts once she did. (Tr. 19-21; GE 9)

SOR ¶¶ 1.c through 1.f allege Applicant has approximately \$21,585 in student loans that became delinquent sometime after 2017, when she stopped attending college. She explained that she planned on going back to college, so she did not pay them. She testified she now does not intend to resume college. She said that in 2021 she made one payment of \$50. She has applied for a student loan forgiveness program. She intends to

repay the student loans in the future when she has the resources. Post-hearing, Applicant provided a document from the Department of Education's (DOE) Default Resolution Group showing her payment history. It showed that, on the day of hearing, she made a payment of \$587. One other payment was reflected as a refund and Treasury offset in March 2020 for \$7,152. She also provided a copy of her bank statement showing a payment made on April 12, 2023, for \$587 to DOE. She wrote on the statement that payments of \$500 will resume each month and she did not have a payment plan due to the pause in the program. (Tr. 31-34, 63-64; AE B, H)

The SOR alleges four delinquent debts to the same credit card company that are in collection. Applicant testified that she was aware she owed two of the credit card debts but was unfamiliar with the other two. She was confused about the debt in SOR ¶ 1.a (\$4,127) but said it was not paid. A judgment was entered for this debt in February 2018. Post-hearing, Applicant provided a payment agreement regarding the debt in SOR ¶ 1.a, which stated that Applicant would pay \$1,000 on April 24, 2023, and then make monthly payments beginning in May 2023 of \$188. It appears Applicant made the first payment. (Tr. 23-28 34-35; GE 7; AE F)

Post-hearing, Applicant provided documents from the collection company that corroborates the debts in SOR ¶¶ 1.b (\$208) and 1.k (\$486) are for the same account, and it was paid from January to May 2022. She provided another document to show in January through March 2022 she made three monthly payments to satisfy the debt in SOR ¶ 1.g (\$413). These debts are resolved. (Tr. 29-31, 34-35, 37; GE 2 - 5; AE C, D, E)

A judgment was entered in December 2017 for the credit card debt in SOR ¶ 1.i (\$3,815) for \$4,649. Applicant complied with a settlement agreement and had a final payment due in May 2023. Her April 2020 credit report reflects she defaulted on the debt in June 2016. The debt is being resolved. (Tr. 36-37; GE 3, 6; AE G)

The debts in SOR ¶¶ 1.h (credit card \$1,113) and 1.j (\$4,944) became delinquent in approximately 2016. Applicant testified that she intends to pay these debts when she completes her payments with the creditor in SOR ¶ 1.i. Post-hearing, Applicant provided a copy of her bank statement showing a payment of \$700 was paid to the creditor in SOR ¶ 1.h on April 12, 2023. She wrote on the statement that this debt was paid off on that date. She did not provide evidence that the creditor agreed to settle the debt and that the debt was settled for less than the full amount. She also provided a copy of a \$500 money order from April 16, 2023, paid to the creditor in SOR ¶ 1.j. She said the creditor does not have payment plans on accounts in collection and the current balance owed is \$5,704. (Tr. 38; GE 3; AE H, I)

Applicant testified that when she moved in 2018, she lost track of the debt in SOR ¶ 1.l (communications services \$1,459). Post-hearing, she stated that she could not find the collection company holding the account. She was continuing her pursuit. (Tr. 39-40; AE A)

Applicant said the debt in SOR ¶ 1.m was her ex-boyfriend's responsibility, but admitted it was held jointly (alarm system \$1,453). Post-hearing, she provided a letter showing the debt was settled on April 24, 2023, for \$1,000. Applicant admitted being responsible for the medical debts in SOR ¶¶ 1.n (medical debt \$732) and 1.o (medical debt \$243). She said she has contacted the hospital where she believes the debts originated but is having difficulty finding the actual bill. None of these debts are resolved, and no documentation was provided to show Applicant disputed any of them. (Tr. 40-41-43; GE 1, AE J)

Applicant has not had any financial counseling or education. She has a budget but lives paycheck to paycheck. She testified that recently she received an \$10,000 income tax refund, she used about \$2,000 to pay some debts, and she keeps the remainder as an emergency fund. She said she has cut her expenses. (Tr. 43-45)

Applicant recently had a delinquent medical debt in collection because she had to go to the hospital. Her children receive free medical care through the state, but she opted not to take medical benefits through her employer in exchange for an increase in her hourly wage. She paid the delinquent debt in April 2023. She also provided a document to show she paid a medical bill for an October 2021 hospital visit that is reported on her March 2023 credit report but was not alleged in the SOR. These debts are not alleged in the SOR. (Tr. 45-46; GE 5; AE K)

Applicant and her sister live together and share expenses. Applicant holds the mortgage on the house where her parents live. It is in her name. Her parents pay the monthly mortgage payment and all the associated expenses. She understands if they fail to do so she is responsible for the mortgage. She does not provide financial support to her parents or anyone other than her children. (Tr. 48-53)

In 2020, Applicant purchased a new vehicle for \$23,000. She traded the car in July 2021 because its exhaust system was damaged, and she purchased a new 2022 vehicle. Her car payments were \$700 a month. In February 2023, she traded in her 2022 vehicle because she hit a pothole and damaged the vehicle. She received approximately \$20,000 for the trade-in value of the 2022 car. She financed \$68,000 to purchase a 2023 electric vehicle. Her monthly car payments are now \$1,300 for 72 months. Her commuting distance to work and to pick up her children are each about 12 miles away. (Tr. 53-62, 67-68)

Applicant attributed her financial issues to the time she took off from work from October 2017 to October 2018 to be home with her child, and then she chose not to return to work. She stopped paying some of her bills. She testified that she always planned to pay her debts but can only do so one at a time. (Tr. 66)

The debts alleged in the SOR are corroborated by Applicant's admissions, court documents of judgments, credit reports from March 2019, April 2020, February 2022, and March 2023. Some of the older debts are not on her most recent credit report. Any

derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis. (GE 1 - 9)

Policies

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 adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to 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).

Analysis

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.

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) (citation omitted) 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 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant began accumulating delinquent debts in 2016. She has delinquent student loans, credit cards, consumer debts, and medical debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 persons 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.

Applicant began having financial problems in 2016, and they continued when she took off work after the birth of her second child in 2017. She admitted she owed the debts alleged in the SOR. Some of her debts were reduced to judgments. Although she could have resumed work, she chose not to, initially because of her child's medical needs, but later it was by choice. Applicant used credit cards to supplement the loss of income and then was unable to pay them. Her debts are ongoing and unresolved. AG ¶ 20(a) does not apply.

Although Applicant's time off after pregnancy may have been beyond her control, she admitted that at a certain point it was by choice. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been employed since October 2018. Post-hearing, she made one voluntary payment towards her student loans. Her tax refund was applied to her delinquent student loans. Some creditors had to take Applicant to court and get judgments. She chose to purchase an expensive new car, raising her monthly payments by \$600, instead of using the money to reduce her delinquent debts. This does not project a person who is acting responsibly. Post-hearing, Applicant provided documents to show she paid or is paying some of her debts in response to the security clearance process. AG ¶ 20(b) has minimal application.

There is no evidence Applicant has participated in financial counseling or that her finances are under control. Forcing a creditor to take you to court to resolve a debt is not evidence of a good faith effort to pay legitimate debts. Applicant made payments on many of the accounts alleged in the SOR, but it was after her hearing and in response to the security clearance process. This also does not constitute good faith. Although Applicant has paid or settled some of the alleged delinquent debts, she still has others remaining. AG ¶¶ 20(c) and 20(d) do not apply.

The fact that Applicant has made some payments or has paid some debts “does not preclude careful consideration of Applicant’s security worthiness based on longstanding prior behavior evidencing irresponsibility.” ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). An applicant who waits until her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff’d*, 367 U.S. 886 (1961) Applicant’s failure to address most of her delinquent debts until after realizing that they were an impediment to obtaining a security clearance “does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation’s secrets.” ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016.)

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 the 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.

Applicant has been employed steadily since 2018 and had a part-time job in 2021. She made some payments on smaller debts and is completing the terms of a settlement on a judgment entered against her, but she did not begin to take meaningful action on most of her debts until after her hearing. She has not met her burden of persuasion. She does not have a reliable financial track record. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that, despite some evidence that some of her debts are resolved, it is insufficient to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraphs 1.c-1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	Against Applicant]
Subparagraph 1.m.:	For Applicant
Subparagraph 1.n-1.o.:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge