



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



In the matter of:)
)
) ISCR Case No. 22-02005
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

05/05/2023

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant has multiple debts and federal student loans that remain delinquent and unresolved. Her recent effort to contract with a debt resolution company is insufficient to establish a track record of financial responsibility and does not mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 25, 2022. On December 1, 2022, 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. The CAF issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent

Directive 4 (SEAD 4), *National Security Adjudicative Guidelines (AG)*, effective June 8, 2017.

Applicant answered the SOR on January 1, 2023, and provided exhibits (AX) A through C. She elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On January 19, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including exhibits (GX) 1 through 4. Applicant received the FORM on February 9, 2023. She responded on March 9, 2023, and provided a statement with additional information and an additional exhibit, AX D. (FORM Response) Department Counsel did not object to the statement or exhibit.

The case was assigned to me on April 11, 2023. The SOR and the Answer (GX 1-2) are the pleadings in the case. GX 3-4, AX A-D, and the FORM Response are admitted without objection.

Note: the SOR was issued in Applicant's maiden name. In her answer to the SOR, she referred to herself by her married name. The caption of this Decision reflects both names.

Findings of Fact

In her Answer, Applicant admitted SOR ¶¶ 1.a-1.z with explanations. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact:

Applicant is 36 years old. She served on active duty in the Army from 2005 through 2008 and received an honorable discharge. During her time in service, she held a security clearance and deployed overseas at least once. She married a fellow soldier just prior to her discharge. They have two teenage children and she has one adult stepson. She attended college from 2009 through 2011 and obtained an associate degree. She also took classes toward a bachelor's degree. She has been with her current employer as a materials handler since April 2021. (GX 2, 3)

The SOR allegations concern the balances on two vehicle loans totaling about \$35,000 following repossessions; fourteen delinquent federal student loans totaling about \$78,000; four delinquent credit card accounts totaling about \$3,800; three delinquent utility and cable bills totaling about \$3,800; and three delinquent payday loans totaling about \$1,800. In addition to Applicant's admissions, the debts are established by Applicant's May 2022 credit report. (GX 2, 4)

Applicant stated that her financial issues began in 2008 after she returned from a deployment and made a "bad decision" by purchasing a new vehicle. Within the year, she was discharged from the Army, married and had a child. Her focus shifted to being a mother and starting her college coursework. She realized that she could not afford the

vehicle and struggled to make payments. The vehicle was later repossessed (§ 1.z). (GX 2-4)

In 2011, Applicant began working full time as a supply technician and earned an annual salary of about \$38,000. Applicant claimed that, during this time, her financial situation improved. However, in 2013, Applicant resigned from this position because of what she described as an “unprofessional relationship” with a coworker. After about six months, Applicant was able to secure new employment, but with a significant pay cut, earning about \$24,000 annually. From 2013 through 2020, she maintained full-time employment, but at continually low salaries. (GX 2-3; FORM Response)

In 2016, Applicant’s husband, who remained in the military at the time, deployed for a year. Applicant described experiencing marital difficulties during this period and facing a “huge financial burden.” Paying her expenses was not a priority and she allowed another vehicle to be repossessed (§ 1.a) because she was not using it at the time. (GX 2-4)

Applicant’s husband began experiencing health issues a few months after his return from the deployment. In 2019, he underwent heart surgery and received a medical discharge from the military. In May 2020, Applicant and her husband moved from State A to State B to be close to his son (her stepson). At the time of their move, Applicant secured a new offer of employment. However, the offer was later withdrawn because of work shutdowns related to COVID-19. Applicant was able to secure new employment, beginning in June 2020. Still, she described experiencing further financial strain during this period following the move. (GX 2-3; AX B; FORM Response)

Since starting with her current employer in April 2021, Applicant has received two significant pay raises. She now earns an annual salary of approximately \$80,500. She and her husband also receive military disability payments. Applicant stated that their combined earnings are just under \$200,000 per year. (GX 2-3; AX D; FORM Response)

In December 2022, following her receipt of the SOR, Applicant contracted with a debt resolution company to settle her debts. She submitted a total debt of \$41,640 for inclusion in the company’s program. This included the accounts referenced in SOR §§ 1.a, 1.m, 1.r, 1.t – 1.v, and 1.x – 1.z. She also included one \$666 debt not alleged in the SOR. She was to make biweekly payments of \$318 into the program over 48 months. The company would then use those funds to negotiate the settlement of Applicant’s debts. The record is absent any evidence of payments in accordance with this program. (GX 2; AX A)

As part of the agreement with the debt resolution company, Applicant submitted a form titled “Personal Cash Flow Assessment,” reflecting that she had an available monthly household income of \$8,000. After the issuance of her biweekly payments to the debt resolution company and other expenditures, she estimated a monthly remainder of \$3,790. This did not include any payments towards her student loans or any delinquent debts outside of the debt resolution agreement. (AX A)

SOR ¶¶ 1.a (\$28,770) and 1.z (\$6,373) are the balances on the two charged-off vehicle loans that remained following the vehicle repossessions referenced above. Applicant disclosed both accounts in her SCA but did not detail any actions she took to resolve the accounts prior to the SOR. Subsequent to the SOR, she included both accounts in her debt resolution agreement. (GX 2-4; AX A)

SOR ¶¶ 1.b (\$11,426), 1.c (\$10,078), 1.d (\$8,724), 1.e (\$8,641), 1.f (\$6,643), 1.g (\$5,851), 1.h (\$5,363), 1.i (\$5,343), 1.j (\$4,616), 1.k (\$4,311), 1.l (\$3,250), 1.o (\$1,399), 1.p (\$1,368) and 1.s (\$980) are delinquent federal student loans in collection. These loans relate to Applicant's associate degree and her studies toward a bachelor's degree. In her Answer and FORM Response, Applicant claimed that, at an unspecified time, she started an application for an income-driven payment plan through the Department of Education (DOE) but did not complete the application. She also asserted that she recently attempted to contact DOE in order to start a payment plan but was unable to get a "straightforward" answer because of the COVID-19 impact on student loan payments. Applicant's delinquent student loans are not included in her debt resolution agreement. (GX 2-4; AX A)

Sua sponte I take administrative notice that, as of this writing, the repayment of several federal student loans has been in forbearance status due to the COVID-19 pandemic under multiple Presidential Executive Orders since March 2020. Federal student loan payments remain paused until at least June 30, 2023. See <https://studentaid.gov/announcements-events/covid-19>.

SOR ¶¶ 1.m (\$2,315), 1.u (\$517), 1.v. (\$488) and 1.x (\$423) are delinquent credit-card accounts that have been charged off or placed in collection. Applicant explained that she used accounts ¶¶ 1.m and 1.u to purchase furniture and Christmas gifts one year. Applicant opened accounts ¶¶ 1.v and 1.x in 2020 to cover expenses related to her move to State B. She included all four accounts in her debt resolution agreement. (GX 2, 4; AX A)

SOR ¶¶ 1.n (\$2,054) and 1.q (\$1,029) are internet and phone accounts that are in collection. Applicant explained that in both instances, when the services became too expensive, she switched carriers and considered the accounts as a loss. Neither account is included in Applicant's debt resolution agreement and there is no evidence in the record of payments. (GX 2, 4)

SOR ¶¶ 1.r (\$1,024), 1.w (\$454) and 1.y (\$300) are payday loans in collection. Applicant described taking these loans in 2019 and 2020 in order to cover expenses following her husband's medical issues and separation from the military. She included accounts ¶¶ 1.r and 1.y in her debt resolution agreement. In about February 2023, she entered into a payment agreement with the creditor for ¶ 1.w. Applicant did not provide evidence that she issued any payments under the agreement. (GX 2, 4; AX C)

SOR ¶ 1.t (\$764) is a collection account for an unpaid utility bill. During her time in State A, Applicant noticed that her water bill had become "outrageous." The water

company determined that there was a leak outside of Applicant's property and the repair would be her responsibility. Applicant did not believe she should have to pay for the repair, so she did not notify the utility company when she moved to State B. Applicant included this account in her debt resolution agreement. (GX 2, 4; AX A)

Applicant acknowledged that she made some "mistakes" with her finances. She also admitted that she should not have waited until she was in the "spotlight" of an investigation to take action to address her delinquent debts. However, she asserted that, with her current work and the disability payments, she is now able to maintain her finances. Applicant detailed that she previously held a security clearance and never experienced a security incident. She stated she takes her career very seriously and has pride in her work. (GX 2; FORM Response)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988)

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 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(a), 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 not drawn 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. Under Directive ¶ E3.1.15, 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 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.

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. . . .

The financial security 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 adjudicative guideline notes two conditions that could raise security concerns under AG ¶ 19 and are potentially applicable in this case:

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

Applicant has a long history of financial difficulties. The delinquent debts in the SOR, including two charged-off vehicle loans, federal student loans, multiple credit cards, payday loans as well as phone and utility accounts are established by Applicant's admissions and the credit report in the record. The above disqualifying conditions apply.

There are four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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.

In 2008, Applicant purchased a vehicle that she quickly realized she could not afford. Over the next year, she was honorably discharged from the Army, got married, had a child and returned to school. A few years later, she experienced income loss when she left her employment. She also experienced marital issues following her husband's deployment. More recently, her husband had heart surgery and was medically discharged from the military. These events were largely beyond Applicant's control and caused significant stress to her financial circumstances. In December 2022, she hired a debt resolution company to assist her in addressing her delinquent accounts. AG ¶¶ 20(b) and 20(d) have some application.

However, Applicant's delinquent debts remained unresolved for years. Although she started her current position in April 2021, there is no evidence in the record that she took responsible action to address the debts prior to receiving the SOR. Even after entering into a debt resolution agreement, Applicant did not provide evidence that she made any payments toward the plan. Meanwhile, Applicant's federal student loans were delinquent before COVID-19 and are not included in her debt resolution agreement. She has not established any plan to resolve these delinquent loans. Her recent promises to pay within the debt resolution agreement do not establish responsible action under the

circumstances. She has not shown a track record of steady payments towards her debts to establish good faith. Neither AG ¶¶ 20(b) or 20(d) fully apply.

With the assistance of the debt resolution company, Applicant formulated a budget and devised a plan to resolve her delinquent accounts. However, given the length of time and extent of her delinquent debts, these recent efforts are insufficient to establish that her financial problems are being resolved or are under control. AG ¶ 20 (c) does not fully apply.

Applicant began experiencing financial difficulties in 2008. In the years that followed, her financial difficulties extended to include new delinquencies that occurred as recently as 2020. Although Applicant recently contracted with a debt resolution company, she has not established a sufficient track record of payments to conclude that the accounts are being resolved responsibly. Her financial difficulties are recent and ongoing. Applicant's financial circumstances continue to cast doubt on her current reliability, judgment and trustworthiness. AG ¶ 20(a) 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.

Applicant served in the Army and received an honorable discharge. She previously held a security clearance without incident. Beginning in 2008, she experienced several events that caused significant financial stress. She also acknowledged that some of her decisions over time increased her financial stress. Recently, she has taken steps to budget and address her financial concerns.

However, even after securing new employment in April 2021, Applicant did not take proximate action to resolve her long-delinquent accounts. Finally, after receipt of the SOR, Applicant formulated a plan to address some of her debts through a debt resolution company. Applicant did not include any record of payments into the plan. Additionally, she did not present any plan regarding the resolution of her delinquent student loans. Her actions are insufficient to overcome the ongoing security concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not provide sufficient evidence to mitigate the financial security concerns.

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.z:	Against Applicant

Conclusion

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

Bryan J. Olmos
Administrative Judge