



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



In the matter of:)	
)	
)	ISCR Case No. 21-02471
)	
Applicant for Security Clearance)	

Appearances

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

06/08/2023

Decision

MANNS, Gatha, 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 February 1, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant submitted a Response to the SOR on May 5, 2022 and requested a decision based on the written record.

The Government's written case was submitted on July 29, 2022, including seven items identified as Government Exhibits (GE) 1 through 7. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. She responded with a memorandum dated August 23, 2022, which I marked as Applicant's Exhibit (AE) A. The case was assigned to me on May 15, 2023. The Government's seven exhibits in this FORM, GE 1 through GE 7, and AE A are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, she admitted all allegations. Her admissions are incorporated in my findings of fact.

Applicant is 34 years old. She attended high school through 2008, but did not graduate. From 2009 through 2010, Applicant attended a career-focused technical school, ultimately earning a medical assistance diploma or degree in December 2010. Applicant married in 2012, but separated from her spouse in 2015. The couple have been in the process of divorce since 2016. They have two children, ages 14 and 9 years old. Applicant has resided with a cohabitant since 2018. (GE 2 and GE 3)

Applicant was first sponsored for a security clearance after being hired as an engineering technician for a defense contractor in January 2017. She completed and certified her security clearance application (SCA) on October 25, 2017. In early 2018, her employer lost the federal contract, but she was rehired by the new contractor for a short time. She was laid off in April 2018 and unemployed through at least November 2018, at the time of her investigative interview. She received child support payments of \$406 every two weeks. (GE 2 and GE 3)

In March 2018, Applicant was arrested for driving under the influence of alcohol (DUI). She pled guilty to DUI and as part of her punishment, she paid fines, attended court-ordered alcohol counseling, and was required to have her car fitted with an interlock device until November 2018. (GE 3)

Applicant has been employed by a federal contractor since at least August 2020. (GE 4 at 2, and GE 5 at 1) In email correspondence dated August 23, 2022, Applicant states she "[has] a good paying job that is allowing [her] to get [her] financial situation under control." (AE A)

The SOR alleges 11 delinquent debts totaling about \$32,000. The debts consist of four delinquent consumer accounts of about \$15,100 (SOR ¶¶ 1.a, 1.b, 1.j, and 1.k) and seven defaulted student loans of about \$16,900 (SOR ¶¶ 1.c through 1.i). The debts are established through Applicant's admissions and four credit bureau reports. (GE 1, and GE 3 through GE 6). She reported no financial issues in her October 2017 SCA. She also denied being delinquent on any federal debt; and, in the last seven years, defaulting on any type of loan; having bills or debts turned over to collections; having any account or credit card suspended; and being delinquent over 120 days on any debt. (GE 2)

Several delinquent debts included in GE 4 through GE 7 are not alleged in the SOR. For example, there are six non-SOR medical debts; four of these debts were assigned to collections in 2013 and 2014; the remaining two were assigned to collections in 2017. Any non-SOR derogatory information will not be considered for disqualifying purposes but may be considered in the application of extenuating and mitigating conditions, and in the whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (GE 4 through GE 7)

In August 2022, well after issuance of the SOR in February 2022, Applicant entered into a 48-month debt resolution contract (contract) with a debt-settlement company (company). Under the contract, the company agreed to resolve seven delinquent debts totaling \$15,708. (AE A) Four debts in the contract are alleged in SOR ¶¶ 1.a, 1.b, 1.j, and 1.k. Three non-SOR debts in the contract are a medical account and two credit card accounts that were opened in August 2021. The evidence shows Applicant exceeded the creditors' credit card limits in both accounts. (GE 5, pp. 4 and 8).

Applicant attributed her financial problems to her “[inability] to afford her debts at hand due to financial hardship;” and being laid off in April 2018 followed by her unemployment for a period of time afterwards. Applicant also points to her status as a single mother of two children, with an economy “going up” as factors that negatively impacted her ability to repay delinquent debts. (GE 1 and AE A).

In her Response to the SOR, Applicant distinguished her delinquent debts between non-student loans, and student loans. For non-student loan debts alleged in SOR ¶¶ 1.a, 1.b, 1.j, and 1.k, she commented: “[These] are debts that I need to contact the collectors to see what payment plan I can afford or see what I can work out to resolve the issue.” For student loan debts alleged in SOR ¶¶ 1.c through 1.i, she commented:

For the longest time I was on a hardship form (sic) due to being a single mother with two children and the economy going up. I did not remit that form in time. Before I could start another form COVID-19 hit and my payments were not need[ed] at the time because the President put all education payments on relief momentarily. I am aware that I still need to pay that once it's lifted. I will then apply for a hardship application. (GE 1)

The available credit bureau reports do not show payments on the delinquent student loans alleged in the SOR. (GE 4 through GE 7) Though Applicant signed the debt resolution contract in August 2022, she has not provided proof of actual payments in accordance with the contract. (AE A). The evidence also shows her debts in SOR ¶¶ 1.b and 1.k were either charged off or in a collection status in 2017. (GE 4)

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.

The guideline notes several 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.

Applicant has a history of financial problems, including defaulted student loans and delinquent consumer debts. AG ¶¶ 19(a) and 19(c) are applicable.

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;
- (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.

Applicant attributed her financial problems to her "[inability] to afford her debts at hand due to financial hardship;" being laid off in April 2018 followed by her unemployment, and being a single mother of two children in an inflationary economy as factors affecting her ability to repay delinquent debts.

The delinquents debts in SOR ¶ 1.a, 1.b, 1.j, and 1.k, are partially, but not fully mitigated under AG ¶ 20(d). Applicant is credited for efforts made towards resolving some of her debts through her 48-month contract with a debt-settlement company. However, she signed the contract in August 2022 well after issuance of the SOR. She provided no proof or record of payments made in compliance with the terms of the contract. The timing of ameliorative action is a factor that should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and

willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

AG ¶ 20(b) is not established by the evidence. The record is clear Applicant was laid off in April 2018, through at least November 2018. The record is unclear, however, regarding the entirety of this period of unemployment. Applicant did not present evidence regarding this missing information. Additionally, the record shows her debts in SOR ¶¶ 1.b and 1.k were either charged off or in a collection status in 2017, well before she was laid off in April 2018. There is also evidence she was arrested for DUI in March 2018, causing additional financial strain. Applicant has not met her burden of demonstrating she acted responsibly under the circumstances.

Applicant has experienced longstanding problems addressing her delinquent student loans in SOR ¶¶ 1.c through 1.i, opened in 2010. She admits that, on more than one occasion, she did not complete forms necessary for a Department of Education financial hardship consideration. She states she is currently unable to remedy the situation because of the President's action in temporarily stopping repayment. In her SOR Response, she comments she will likely seek a hardship application after the President's moratorium is lifted.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are ongoing, and continue to cast doubt on her current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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 and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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 through 1.k:	Against Applicant

Conclusion

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

Gatha Manns
Administrative Judge