



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



In the matter of:)	
)	
)	ISCR Case No. 22-02135
)	
Applicant for Security Clearance)	

Appearances

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

06/27/2023

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 30, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. On January 27, 2023, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on February 23, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded 30 days after receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 2, 2023. She has not responded to it and the 30-day deadline has passed. The case was assigned to me on June 1, 2023. The Government exhibits included in the FORM, marked as Items 1-10, are admitted in evidence without objection.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor for whom she has worked since April 2015. She has also worked as a contractor with another government agency (AGA) since about June 2022. She earned a bachelor's degree in 1996. She has been married since 2019 and has an eight-year-old child. (Items 2-4)

In the SOR, the Government alleged Applicant's 10 delinquent debts totaling approximately \$80,000 (SOR ¶¶ 1.a through 1.j). These delinquencies consist of credit cards (SOR ¶¶ 1.a through 1.h) and mortgages (SOR ¶¶ 1.i and 1.j.). She admitted the allegations in SOR ¶¶ 1.a through 1.i with additional comment. Her admissions are adopted as findings of fact. She denied the allegations in SOR ¶¶ 1.j with additional comments. The credit reports do not reflect a current balance on the account referenced in SOR ¶¶ 1.j. Moreover, in her response to the SOR, Applicant provided a 2022 statement from the creditor showing that this account had been satisfied. Therefore, the allegations in SOR ¶ 1.j have not been established. (Items 1-10)

The delinquent credit card in the amount of \$15,272 alleged in SOR ¶ 1.a has not been resolved. Applicant opened this credit card between 2008 and 2010 to use to purchase groceries and other household items. She defaulted on the credit card in late 2019. Beginning sometime in 2022, she contacted the creditor to make a payment arrangement, but she could not afford the payments the creditor required. In her response to the SOR, she claimed that she would try again, but she has not provided evidence of any subsequent resolution attempts. The credit reports reflect a last payment date of February 2020. (Items 1, 2, 4, 7-10)

The delinquent credit card in the amount of \$6,205 alleged in SOR ¶ 1.b has not been resolved. Applicant opened this credit card about 20 years ago to use to purchase groceries, clothes, and other household items. She defaulted on the credit card in late 2019. Sometime in 2021, she contacted the creditor to request a forbearance on this account for a few months, which the creditor granted. Sometime in 2022, she contacted the collection agency to which the creditor had referred the account to make a payment arrangement, but she could not afford the payments the collection agency required. In her response to the SOR, she claimed that she would try again, but she has not provided evidence of any subsequent resolution attempts with the creditor. The credit reports reflect a last payment date of November 2020. (Items 1, 2, 4, 7-10)

The delinquent credit card in the amount of \$4,826 alleged in SOR ¶ 1.c is resolved. Applicant opened this credit card in 2007 or 2008 to use to purchase groceries, gas, and other household items. She defaulted on the credit card in late 2019. Sometime in 2020, she contacted the creditor to request a forbearance on this account for a few months, but the creditor did not agree to her request. In 2022, she contacted the creditor to make a payment arrangement, but she could not afford the payments the creditor required. In January 2023, the creditor agreed to settle her account for a one-time payment of \$966. She provided documentary corroboration that she settled the account for this amount in January 2023. (Items 1, 2, 4, 7-10)

The delinquent credit card in the amount of \$4,336 alleged in SOR ¶ 1.d is being resolved. Applicant opened this credit card about 20 years ago to use to purchase clothes and other household items. She defaulted on the credit card in late 2019. Sometime in 2020, she contacted the creditor to request a forbearance on this account for a few months, which the creditor granted. In 2022, she contacted the creditor to make a payment arrangement, but she could not afford the payments the creditor required. In January 2023, the creditor agreed to settle her account for three payments of \$650 in January, February, and March 2023. She provided documentary corroboration that she has paid the January 2023 payment and claimed that she will timely pay the other two. (Items 1, 2, 4, 7-10)

The delinquent credit card in the amount of \$3,735 alleged in SOR ¶ 1.e is being resolved. Applicant opened this credit card about 20 years ago to use to purchase clothes and other household items. She defaulted on the credit card in late 2019. Sometime in 2020, she contacted the creditor to request a forbearance on this account for a few months, which the creditor granted. After her period of forbearance ended, she contacted the creditor to make a payment arrangement, but she could not afford the payments the creditor required. In January 2023, the collection agency to which the creditor had referred the account agreed to accept \$50 monthly payments until the full balance is paid. She claimed that she made one \$50 monthly payment, but she has yet to receive a receipt. She has not provided evidence of any additional payments on this account. The February 2023 credit report reflects a last payment of January 2023. She claimed that she will continue to make her monthly payments until she resolves the balance. (Items 1, 2, 4, 7-10)

The delinquent credit card in the amount of \$3,523 alleged in SOR ¶ 1.f has not been resolved. Applicant opened this credit card about 20 years ago to use to purchase clothes and other household items. She defaulted on the credit card in late 2019. Sometime in 2020, she contacted the creditor to request a forbearance on this account for a few months, which the creditor granted. After her period of forbearance ended, she contacted the creditor to make a payment arrangement, but she could not afford the payments the creditor required. Sometime in 2022 and in 2023, she contacted the collection agency to which the creditor had referred the account to make a payment arrangement, but she could not afford the payments the collection agency required. In her response to the SOR, she claimed that she would try again, but she has not provided evidence of any subsequent resolution attempts. The credit reports reflect a date of last activity of May 2020. (Items 1, 2, 4, 7-10)

The delinquent credit card in the amount of \$2,877 alleged in SOR ¶ 1.g has not been resolved. Applicant opened this credit card between 2007 and 2012 to use to purchase electronics. She defaulted on the credit card in late 2019. Sometime in 2021, she contacted the creditor to request a forbearance on this account for a few months, but the creditor would not agree to a forbearance. Sometime in 2022 and in 2023, she contacted the collection agency to which the creditor had referred the account to make a payment arrangement, but she could not afford the payments the collection agency required. In her response to the SOR, she claimed that she would try again, but she has

not provided evidence of any subsequent resolution attempts. The credit reports reflect a date of last activity of August 2020. (Items 1, 4, 7-10)

The delinquent credit card in the amount of \$2,531 alleged in SOR ¶ 1.h has not been resolved. Applicant opened this credit card in October 2015. She defaulted on the credit card in about April 2020. Sometime in 2021, she contacted the creditor to request a payment arrangement, but she could not afford to pay the amount the creditor required. Sometime in 2022 and in January 2023, she contacted the collection agency to which the creditor had referred the account to make a payment arrangement, but she could not afford the payments the collection agency required. In her response to the SOR, she claimed that she would try again, but she has not provided evidence of any subsequent resolution attempts. The credit reports reflect a date of last activity of March 2020. (Items 1, 4, 7-10)

Applicant had two delinquent mortgage accounts as alleged in SOR ¶¶ 1.i and 1.j. She claimed that both accounts are held by the same creditor. Both mortgages were secured by a condominium that she owned. The mortgage alleged in SOR ¶ 1.j was a 2014 refinance of an earlier mortgage (the First Mortgage). The mortgage alleged in SOR ¶ 1.i was a second mortgage that she opened in about 2006 for a loan amount between \$40,000 and \$50,000 (the Second Mortgage). In about 2020, she fell behind on her required payments on both the First Mortgage and the Second Mortgage because her employer did not provide her with enough hours to pay her bills. From the time she became delinquent until January 2023, she stayed in consistent contact with the creditor. She attempted to resolve these accounts through a sale and a deed in lieu of foreclosure, but her efforts were unsuccessful. In about 2021, the creditor began the foreclosure process on the condominium and subsequently sold the property. The sale proceeds satisfied the First Mortgage, but not the Second Mortgage. The First Mortgage is resolved, but the Second Mortgage is not resolved. She claimed that she contacted the creditor of the Second Mortgage in January 2023, but the creditor wanted more money than she was able to afford. In her response to the SOR, she claimed that she followed up with an e-mail to the creditor that same month and was awaiting a response. She provided no evidence of any subsequent attempts to resolve the Second Mortgage. (Items 1, 2, 4-10)

The primary reason Applicant cited for her financial delinquencies was a reduction in her income in 2019 because her employer did not offer her enough hours. She also attributed her financial delinquencies to her husband's unemployment in February 2020, the pandemic, and various other foreseen and unforeseen expenses. She claimed that she moved to a location with a lower cost of living and took an unspecified credit-counseling course in January 2023. She claimed that she is trying to find additional work to earn more money, and that it has always been her intention to repay her SOR debts once she has the funds to do so. Despite her claim that she had insufficient funds to address her SOR debts, in July 2021, she paid \$19,000 in cash for a jet ski. She justified this purchase because she had always wanted a jet ski and because she never bought anything for herself. She claimed that she will consult a bankruptcy attorney to determine if filing bankruptcy is a viable means to resolve her

debts. She did not provide evidence of her income or expenses, so I am unable to determine whether she is able to afford her financial responsibilities. (Items 1, 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.

At the outset, I find in Applicant’s favor with respect to the allegations in SOR ¶ 1.j, because they were not established. She had several other delinquent consumer debts totaling about \$52,000. Many of those established debts have been delinquent for years. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

While she has resolved or is resolving some of her SOR debts, several of Applicant's financial delinquencies are ongoing. She has not provided a timeline for when she will resolve them and has not provided sufficient evidence that she has the income to do so. She has not established a track record of financial responsibility. I cannot find that her financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's financial issues arose because of underemployment, her husband's unemployment, the pandemic, and unforeseen expenses. These conditions were beyond her control. For AG ¶ 20(b) to fully apply, she must also show that she acted responsibly under the circumstances with respect to these debts. At first blush, it appears that she did. She stayed in contact with her creditors and paid some of the debts as she was able. However, her July 2021 \$19,000 cash purchase of a jet ski undermines her claim that she has acted responsibly. This purchase also detracts from her claim that she had insufficient funds to address her delinquencies. It also undermines any claim that she made a good-faith effort to repay overdue creditors or otherwise resolve debts. Given her choice to spend this significant amount of money on a luxury item while she had other unresolved delinquencies, I cannot find that she acted responsibly given the circumstances, or that she made a good-faith effort to resolve her debts. I also note that any payments she made on her SOR debts were made after the SOR was issued, which reduces the mitigative value. AG ¶ 20(b) and AG ¶ 20(d) are not fully applicable.

While Applicant has undergone some credit counseling, because of her significant unresolved delinquencies and lack of budget information, I cannot find that there are clear indications that the problem is being resolved or is under control. AG ¶ 20(c) does not apply.

Other than the debt in SOR ¶ 1.j, which I found in Applicant's favor, she does not dispute the other debts. AG ¶ 20(e) applies to SOR ¶ 1.j but not to any of the other SOR debts.

None of the Guideline F mitigating factors are fully applicable. Applicant's financial issues continue to cast doubt on her current reliability, trustworthiness, and good judgment.

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-1.i:	Against Applicant
Subparagraph 1.j:	For 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.

Benjamin R. Dorsey
Administrative Judge