



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



In the matter of:)	
)	
)	ISCR Case No. 22-00289
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On July 19, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a SOR to Applicant detailing security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On August 17, 2022, Applicant answered the SOR. She admitted all the allegations except SOR subparagraphs 1.b and 1.c, and she requested a decision based on the evidence on file rather than a hearing. On December 21, 2022, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government’s arguments against Applicant’s security clearance-worthiness. The FORM contained 13 attachments, identified as Item

1 through Item 13. Applicant received a copy of the FORM on December 22, 2022. On February 3, 2023, Applicant filed a Reply, whereupon the case was assigned to me on February 18, 2023.

Findings of Fact

Applicant is a 48-year-old, divorced woman with one adult child. She is a veteran of the U.S. Navy, serving from 1992 to 2002. Her discharge was honorable. (Item 3 at 25) Applicant earned some college credits after graduating from high school. (Item 3 at 14) Over the years, she has earned several vocational education certificates in the field of telecommunications engineering. (Item 3 at 13-14) She has spent her career working for various defense contractors as a system administrator. (Item 3 at 17-22) She has held a security clearance since 1994. (Item 3 at 43)

Applicant and her then husband periodically struggled with their finances in the early 2000s, through bouts of her then-husband's unemployment. (Item 13 at 39-42) In 2007, their periodic struggles intensified after her then husband became seriously ill, and subsequently, addicted to painkillers after multiple surgeries. (Reply at 1) He lost his job in 2007 and never worked again for the remainder of their marriage, which ended in October 2020 after a five-year separation. (Reply at 1) Dependent on both incomes to make ends meet, Applicant began to struggle during these years, as the family income decreased by more than 50 percent. (Reply at 1) Overwhelmed, Applicant incurred commercial debt totaling approximately \$12,000, as alleged in subparagraphs 1.a through 1.c. She also failed to timely file her state income tax returns from 2012 to 2018, as alleged in subparagraph 1.d, as well as her federal income tax returns for tax years 2012 to 2017, 2020, and 2021, as alleged in SOR subparagraphs 1.g and 1.h. (Item 2 at 3) In addition, she incurred an \$1,826 state income tax delinquency, as alleged in subparagraph 1.f (Item 2 at 3), and a \$16,936 federal income tax delinquency, as alleged in subparagraph 1.i. (Item 2 at 12)

In 2018, Applicant became an independent contractor. Subsequently, her income began increasing each year. (Reply at 1) Specifically, in 2018, she earned approximately \$89,000 annually, and by 2021, she was earning approximately \$200,000 annually. (Item 6 at 8-9; Item 5 at 1)

As Applicant's income began increasing, she began satisfying her delinquent debt and catching up on her income tax filings. (Reply at 1; Item 2 at 14) By March 2021, she paid the debt alleged in subparagraph 1.c and the \$120 delinquent cable television bill alleged in subparagraph 1.c (Item 2 at 6). By February 2023, she satisfied the state and federal income tax delinquencies, as alleged in subparagraphs 1.f and 1.g. (Reply at 8 – 10)

With the help of a professional tax preparer, Applicant has completed filing all her back tax returns. (Reply at 11) Currently, she is making arrangements to satisfy the balances for federal tax years 2020 and 2021. (Reply at 1)

The remaining outstanding SOR debts are subparagraph 1.a, totaling \$737, and subparagraph 1.b, totaling \$11,397. Subparagraph 1.a is a medical bill that Applicant incurred after she was in a car accident. She contends that she should not be responsible for this bill because the driver that hit her car was at fault, not her. She provided a letter from an attorney that she retained to resolve this matter, and as of September 2022, she was disputing it in litigation. (Item 2 at 15)

Subparagraph 1.b, totaling \$11,397, is the remaining amount Applicant owed on a car loan after her car was totaled in an accident. (Reply at 1) When she purchased the car in 2013, she could not afford to purchase GAP insurance. (Reply at 1) It is unknown from the record whether this was the same car accident that she incurred the medical bill, as alleged in subparagraph 1.b. Applicant has no plans to pay this debt because it has been charged off her credit report. (Item 10 at 7)

Applicant maintains a budget. She has \$7,295 in monthly, discretionary income. (Item 6 at 8)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18)

Applicant's history of financial problems, including her failure to timely file multiple, consecutive years of federal and state income tax returns trigger the application of AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal state, or local income tax as required." Applicant's financial problems began after her ex-husband, upon whom she was dependent to help make ends meet, became seriously ill and addicted to painkillers during his treatment, subsequently leading to the loss of his job.

Since Applicant's salary began steadily increasing in 2018, she has gradually begun satisfying her delinquent debts and catching up on her income tax return filings. In the process, she has crafted a budget, credibly disputed one of the debts by retaining an attorney to assist her, and she retained a professional tax preparer to help her file her tax returns. I conclude that the following mitigating conditions are applicable:

- 20(a) the behavior . . . 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;

20(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;

20(d) 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; and

20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Currently, Applicant's only outstanding debt is the amount due after her car was totaled in an accident, leaving her unable to pay the difference between what the insurance company reimbursed her, and what she owed on the car note. It certainly would have been prudent for Applicant to have purchased GAP insurance when she bought the car; however, she could not afford it. The fact that the creditor has charged off this debt is not mitigating. Any negative inference triggered by her inability to pay this debt before and since the creditor charged it off is outweighed when viewed in light of the origins of Applicant's financial difficulties, her steps to remedy her financial problems, her payment of all of the other SOR debts, and her current financial stability. On balance, I conclude Applicant mitigated the financial considerations security concerns.

Whole-Person Concept

I considered the whole-person factors in my analysis of the disqualifying and mitigating conditions, particularly, the circumstances surrounding the origin of the problem and the current, significant presence of rehabilitation.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge