



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



In the matter of:)	
)	
)	ISCR Case No. 22-01314
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

06/26/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant incurred some delinquent debts, including an account relating to a repossessed auto, several years ago during a period of family and financial strain. She took no action to address the repossession, choosing instead to wait for it to drop from her credit report. This does not show good-faith responsible action towards her debts. She did not provide sufficient evidence to mitigate financial considerations security concerns. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 23, 2021. On July 20, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. (Item 1) The CAS issued the SOR under Executive Order 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 Security Executive Agent

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

Applicant answered the SOR on August 24, 2022, and elected to have her case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, instead of a hearing. (Item 1) With her SOR response, she also provided seven pages of documents, including excerpts from a credit report (Applicant Exhibit (AE) A) and two emails regarding debt payments (AE B).

On September 22, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. DOHA mailed the FORM to Applicant the next day, and she received it on October 28, 2022. She was given 30 days from receipt of the FORM to submit materials in response, and to object to the Government's evidence.

On or about December 16, 2022, having received no response from Applicant, the case was forwarded to the DOHA hearing office. The case was assigned to me on or about January 26, 2023. A day later, a member of DOHA's administrative staff forwarded a request from Applicant, through her employer, for additional time to submit documents in response to the FORM. I granted the request and reopened the record. (Hearing Exhibit (HE) I)

On or about February 14, 2023, Applicant submitted documents in response to the Government's FORM, including a November 21, 2022 update to her answer to the SOR ("SOR Reply"), seven documents regarding debt payments, dated between August 2022 and January 2023 (AE C - I) and November 2022 credit reports from Experian, Equifax, and TransUnion (AE J, K, and L, respectively). The record closed upon receipt of these documents.

Government Item 1, the SOR and the Answer, are the pleadings in the case. Government Items 2 through 5 are admitted without objection. The SOR Reply and Applicant Exhibits A through L are also admitted without objection.

Findings of Fact

In Applicant's answer to the SOR, she admitted the four SOR debts (§§ 1.a through 1.d) but asserted that § 1.c was a duplicate of § 1.b. Her admissions are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 58 years old. She was married from 1984 through 1994, when she and her husband divorced. She has a son and a daughter. She has been employed as a financial analyst for a consulting company since 2020. She has held similar jobs in that field, as a federal contractor from 2007 through 2014 and 2014 through 2020. She has held a clearance since September 2018. (Item 2)

Applicant reported on her SCA that she had some delinquent debts, stating “I got behind on some of my bills and I am working on catching up.” She disclosed several debts, including a \$22,000 voluntary repossession of a vehicle in about December 2014. (Item 2 at 34-38) She also discussed her debts and her overall financial situation during background interviews in January and February 2022. (Item 3)

The SOR debts are detailed in credit reports from November 2021 and June 2022. (Items 4, 5) As alleged, the SOR debts total \$28,895, though Applicant asserts that one debt, for \$2,662, is a duplicate.

SOR ¶ 1.a (\$22,271) is a charged-off debt relating to an auto repossession. (Item 4 at 3, Item 5 at 2) During her first background interview, she indicated that she had taken no action to address the debt with the creditor since the repossession and was not willing to do so. She said she hoped the debt would fall from her credit report. In her Answer to the SOR, she admitted the debt, and noted that it should “fall off my credit report by March 2023,” seven years after it appeared. (Item 1) She also provided a credit report excerpt noting the debt. (AE A) (Item 3 at 2)

In her SOR Reply, Applicant said the debt had fallen off of her credit report and provided recent credit reports as proof. (AE J, AE K, AE L) She explained that her daughter became pregnant in 2015 and Applicant moved into a larger house with her daughter and the daughter’s then-boyfriend with an agreement that they would share costs. They failed to do so. Applicant had to absorb all the costs herself, leading her to fall behind on this debt and others. (SOR Reply; Item 3 at 2)

SOR ¶ 1.b (\$3,786) is an account placed for collection by a credit union. As of November 2021, this account, # 512362, had a balance of \$4,114. (Item 3 at 4); as of June 2022, this account had a balance of \$3,786, as alleged. (Item 5 at 2) Applicant provided documents with her Answer and SOR Reply showing that she made payments of \$100, \$150, \$100, \$150, and \$150 between January and October 2022. (AE B – AE H) This account is being paid.

SOR ¶ 1.c (\$2,662) is an account charged off by the same credit union as the creditor for SOR ¶ 1.b. This account, # 5570XXXXXXXX4535, is listed on both credit reports (Item 4 at 4, Item 5 at 2) Applicant asserted that she has had only one account with this credit union and said she had disputed the account. (AE A; SOR Reply) She cited the Equifax credit report, noting account number 4535. This account is listed on that report, as charged off with a balance of \$2,662, as alleged. (AE K at 28) This account does not appear on the other November 2022 credit reports. (AE J, AE L) Based on the information in the credit report, SOR ¶¶ 1.b and 1.c appear to be two separate accounts.

SOR ¶ 1.d (\$176) is a retail credit account that has been charged off. (Item 4 at 3 Item 5 at 2) It has been paid. (AE A, AE I)

In her background interview, Applicant said she had not prioritized her debts but for the ones for which she had set up payment plans, because she could not afford it. She

was caring for her adult daughter and grandson who lived with her. She earned about \$8,917 gross and \$5,615 net, per month. Monthly expenses and debt payments leave about \$1,250 in monthly surplus intake. She had not taken on new debt but did not have a budget or a financial plan. (Item 3 at 5) There is no indication that she has participated in financial counseling, per se, but she is a professional financial analyst, so she likely has had professional financial training. Applicant gave no details about her current finances in her SOR Reply beyond her credit reports, which largely show that she is current on her payments.

Policies

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

The adjudicative 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(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 access to classified information 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. 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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This 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 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 fell behind on her debts in 2014 or 2015, after her daughter and her daughter's boyfriend moved in with their child. Her debts are established by the credit reports in the record, including SOR ¶¶ 1.b and 1.c. The record did not establish that they are the same debt. AG ¶¶ 19(a) and 19(c) apply to SOR debts ¶¶ 1.a-1.d.

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 person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or 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.

AG ¶ 20(a) has some application. Applicant incurred these debts several years ago, while she was helping out her family financially. Her current credit reports show good financial stability. SOR ¶ 1.a, the repossession debt, however, is still a “continuing course of conduct” as it is an ongoing, unresolved delinquent debt, so it can be considered recent under AG ¶ 20(a).

Applicant experienced financial problems and fell behind on her debts several years ago after she took in her daughter, her daughter’s boyfriend and their child, and assumed full financial responsibility for them. They had agreed to help out but did not do so. AG ¶ 20(b) has some application given this circumstance beyond her control.

Applicant returned a vehicle but was left with a \$22,000 balance afterwards. She took no action to inquire about the debt with the creditor since then, and said she did not intend to do, in the hopes that it would fall off of her credit reports. The Appeal Board has held that a debt dropping from a credit report is not meaningful evidence of debt resolution. ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016). Applicant has not undertaken good-faith, reasonable efforts to address SOR ¶ 1.a.

SOR ¶ 1.b is being paid and SOR ¶ 1.d has been paid. AG ¶ 20(d) applies to those debts. Applicant did not establish that SOR ¶ 1.c is the same debt as SOR ¶ 1.b. These two debts have different account numbers and are listed separately on both credit reports submitted by the Government. SOR ¶ 1.c. is unresolved as Applicant did not provide sufficient documentary evidence to show otherwise. Neither AG ¶¶ 20(c) nor 20(e) apply. Applicant does not keep a budget and did not establish that she has participated in financial counseling.

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(a), 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 did not provide sufficient evidence to mitigate the security concern shown by her delinquent debts. This does not mean that she cannot show such evidence in the future. Overall, the record evidence leaves me with questions and doubts as to her eligibility for a security clearance.

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
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge