DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 19-03942
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

07/28/2023

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Decision

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MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 20, 2016. On August 19, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (EO) 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On November 29, 2021, Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge. The Government was ready to proceed on January 19, 2022. The case was assigned to me on August 22, 2022. On October 27, 2022, the Defense Office of Hearings and Appeals (DOHA) notified the parties that the

hearing was scheduled for November 18, 2022. I convened the hearing as scheduled via video conference.

At the hearing, I admitted Government Exhibits (GE) 1, 3, and 4, without objection. I did not admit GE 2 after sustaining Applicant's objection. I appended to the record correspondence the Government sent to Applicant as Hearing Exhibit (HE) I. Applicant testified and submitted Applicant Exhibits (AE) A through I, which I admitted, without objection. AE I was previously attached to the Answer. I appended to the record Applicant's exhibit list as HE II. At Applicant's request, I left the record open until January 6, 2023, to allow her the opportunity to submit additional information. She timely provided additional documents that I admitted as AE J through Q, without objection. I appended to the record the transmittal email accompanying Applicant's post-hearing submission as HE III. DOHA received the transcript (Tr.) on December 1, 2022. (Tr. at 13-14)

Findings of Fact

Applicant, age 47, has been married three times. She was married to her first husband from 1994 until they divorced in 2001, and to her second husband from 2005 until they divorced in 2011. In 2021, she married her third husband and assumed his last name. She has three children, one of whom is currently living. Her eldest daughter, who passed away the day she was born, would be 30 years old. Her son, who was killed in a single vehicle accident in February 2020, would be 28 years old. Her youngest daughter is 29 years old. Applicant earned her high school diploma in 1994. At various times not specified in the record, she attended college courses to obtain certificates in her field. She was steadily employed as a defense contractor by several employers from 2005 until August 2019, when she became unemployed. She remained unemployed until October 2019, when she began working as a database administrator for her current employer. She has maintained a DOD security clearance since 2006. (GE 1, 2; Tr. at 4, 15-19, 70-71)

The SOR alleged five delinquent debts totaling $46,093. In her Answer, Applicant admitted SOR ¶¶ 1.a through 1.c. She denied SOR ¶¶ 1.d and 1.e. Each of the debts alleged in the SOR is established by Applicant's August 2019 credit report. (GE 3, 4)

SOR ¶¶ 1.a and 1.b

Applicant took out two parent federal student loans ($12,000 in 2011, and $12,000 in 2013) to afford her daughter the opportunity to attend college. As of August 2019, the two student loans were in default status in an amount totaling $45,043, as alleged in SOR ¶¶ 1.a and 1.b. Her daughter was the first in the family to attend college. Her daughter graduated a year early from high school and went straight to college in 2011. Her daughter earned her bachelor's degree in 2014, an associate degree in 2019, and a master's degree in 2020. As of the hearing, her daughter was pursuing a second master's degree. (Tr. at 40-41, 62-67, 78-79)

Applicant maintained that the student loans were not in delinquent status due to any intentional action on her part to avoid paying them. As she understood it, while her

daughter was enrolled in a degree program at least half time, she would not have to make any loan payments until her daughter graduated. She never made any payments because she believed that her daughter had remained enrolled in a degree program from 2011 through March 2020. In March 2020, the loans became eligible for COVID-pandemic related relief through September 2023. (Tr. at 22, 40-48, 59-60)

In November 2022, Applicant applied to rehabilitate the student loans to take advantage of the U.S. Department of Education (DOE)'s "Fresh Start" program. On November 8, 2022, she paid $100 to start the loan rehabilitation process. The "Fresh Start" program helps eligible borrowers get their loans out of default status and transferred to a new loan servicer with an income-driven repayment plan. In December 2022, Applicant was accepted into the program and the student loans were removed from default status and transferred to a new loan servicer. She had not yet received information about the terms of the repayment plan. She planned to pay the student loans from her monthly net remainder, which was $866 as of November 2022. She anticipated that she will "find a way" to pay the student loans should the monthly repayment plan amount exceed $866. (Tr. at 48-54, 61; AE A, O, J)

Applicant did not learn of the delinquent status of the student loans until she received the SOR. Upon investigation, she learned that they became delinquent due to a change in her daughter's enrollment status, of which she had not been aware. In November 2021, she obtained a record indicating that her daughter was not enrolled in school between October 2017 and September 2018, and again between November 2019 and December 2019. The record indicated that her daughter was otherwise enrolled, at least half time, from June 2017 through March 2020. Two 2019 credit reports indicated that the student loans may have been in default as of July 2015. Applicant believed that her daughter was enrolled in school as of July 2015, but acknowledged that she "did not know for certain." (Tr. at 42-43, 68; AE I at 2; GE 3, 4)

SOR ¶ 1.c

SOR ¶ 1.c involves a $599 medical bill incurred by Applicant on her behalf. Based on conversations she had with her medical provider, she believed that the bill had been paid via her health savings plan (HSP), the same method she used to pay all bills she incurred with this provider. She continued to receive services from this provider after incurring the bill. She did not become aware that the bill had not been paid until she received the SOR. Two 2019 credit reports indicate that the debt was incurred in about 2015 and placed for collection in about 2019. After investigating the matter, she learned that, because the funds in her health savings plan were not sufficient to pay the entire bill, the HSP denied the entire claim. By that time, the appeal deadline had passed so she decided to pay the debt out of pocket. On November 9, 2021, she paid $674 to a collection company to resolve the debt in full. (Tr. at 29-34; AE B; AE I at 7; GE 3, 4)

SOR ¶ 1.d

SOR ¶ 1.d involves a utility account Applicant asserted was reported in error. Two 2019 credit reports indicate that the alleged account was placed for collection in about

2014 in the amount of $486. Applicant denied owing the debt on the basis that she had continuous service with the same utility company since 1994 and had no known delinquencies on her account. After learning of this debt when she received the SOR, she contacted the utility company. She proffered a letter from the utility company, dated November 9, 2021, indicating that this account had been closed with a $0 balance upon receipt of a $486 payment in March 2016. (Tr. at 34-37; AE C; AE I at 8; GE 3, 4)

SOR ¶ 1.e.

SOR ¶ 1.e involves a $65 medical debt reported in collection status on two 2019 credit reports. Applicant denied any knowledge of the alleged debt or any other known delinquent medical debt. She received no letters, phone calls, or emails concerning a $65 debt. She was unaware of this debt until she received the SOR. Both she and her attorney attempted to investigate the debt. However, neither were successful in obtaining any information to validate the debt. She was directed to a collection company that had gone out of business, and to information suggesting that the debt may be for services owed to a known medical provider. However, she denied that she had any delinquencies on her account with that known medical provider. Applicant is willing to pay the debt should she obtain information in the future that both validates the debt and confirms the payee. This debt did not appear on her November 2022 credit report. (Tr. at 37-39; AE H; GE 3, 4)

2011 Divorce

Applicant attributed her 2011 divorce to her second husband having "gone through a lot" after his younger brother was killed. She stated, "[h]e got very sick and we had to get divorced." She was left with "just a ton of debt that was in both of our names," including taxes, two mortgages, "extensive" credit-card debts, traveling expenses, and personal loans. Her second husband was not able to work at the time they divorced so, between about 2011 and 2014, she was "making all the payments on everything and just trying to let him regroup and get some help that he needed to get." In 2014, when their niece tragically passed away, her second husband "showed up at the funeral and made amends," and "started helping me pay things back." By then, he had started a new business in real estate and started financially helping "the kids, even my daughter with her tuition." (Tr. at 19-20)

At the hearing, Applicant maintained that all her 2011 divorce-related debts had been paid except for the taxes. However, she could not recall when the non-tax debts had been finally resolved or how much she paid to resolve them. After the hearing, she reported that she made monthly payments, totaling $1,201, for an unspecified period, towards the debts she had been assigned to pay in her 2011 divorce decree. Those debts included six credit-card debts (which then totaled $32,377) and one private student loan that she took out on behalf of her son (which then totaled $37,500). (Tr. at 19-20, AE Q)

Taxes

On her 2016 SCA, Applicant reported that she failed to pay 2012 federal and state income taxes in the approximate amount of $3,000. She explained that she had "issues

with getting paperwork from previous marriage" and that there was a "discrepancy of who would be claiming the children and who owed the other money for claiming the children on the previous year." She stated, "I am on a payment plan to repay the amount owed and being reimbursed by my ex-husband." (GE 1)

At the hearing, Applicant disclosed that she had been paying $152 monthly towards federal income tax debt, and $211 monthly towards state income tax debt, pursuant to installment agreements she negotiated in about 2016. She asserted that she never missed an installment agreement payment, and was up to date with her federal and state tax income return filings. (Tr. at 54-55, 57, 68-69)

After the hearing, she proffered documents corroborating that she made timely payments from June 2017 through December 2022, totaling $13,810, pursuant to an approved payment plan towards her delinquent state tax debt; and timely payments from January 2018 through December 2022, totaling $8,250, pursuant to an approved payment plan towards her delinquent federal tax debt. As of January 2019, the balance of Applicant's federal tax debt for tax years 2011, 2013, and 2014 through 2016, totaled $38,542, including a failure-to-pay penalty and interest (the breakdown was as follows: $16,147 for 2011, $8,307 for 2013, $6,814 for 2014, $4,47 for 2015, and $2,827 for 2016). As of September 2022, the balance remaining on her state tax debt was $378. The record did not indicate for which tax years her state tax debt related. As of January 2023, the balance remaining on her federal tax debt was $26,504 (the breakdown was not indicated in the record). Her 2022 federal tax refund of $4,000 was applied to her federal tax debt. The record did not indicate whether her state or federal debt had ever been considered in delinquent status, neither were they alleged in the SOR. (Tr. at 69, 81-82; AE K, L, N)

Income and Expense History

Applicant did not earn any income during her unemployment between August and October 2019. Prior to being laid off in October 2019, she earned an annual salary of $87,000. As of the hearing, her annual income increased over time to $97,000, and her third husband was earning a monthly income of $4,963. She has about $2,000 in her savings account (which had been reduced by the amount she used to replace a damaged windshield on her car and the increased price of her home's oil heat). She has about $14,000 in her 401K account. (Tr. at 52, 54-55, 57, 70-72, 84-85)

Applicant attributed her financial strain to circumstances beyond her control including her divorce, financially supporting her children, the tragic passing of her son and close colleagues, and the COVID-19 pandemic. She acknowledged that these circumstances contributed to her lack of attention to the student loans. (Tr. at 19-28, 44-48, 66-67, 69, 74-75, 77)

Applicant financially supported her daughter while she was away at college between 2011 and about 2015, during which time she estimated that she paid $30,000 for her daughter's out-of-pocket college expenses. She stated, "I helped her with food, rent, a car, car insurance, cell phone, etc." Applicant's son and his girlfriend began living with her in 2014, when his girlfriend was pregnant with their first child, who was born in

2015. She continued to support her son and his family, including financially and otherwise, after her second grandchild was born in October 2018, and until they moved out and into their own home in February 2019. She was their primary financial provider during the period they resided with her. In addition to not charging them rent, she provided them with food, utilities, diapers, and whatever else they needed. Her son was employed and financially "helped out when he could," but his girlfriend did not earn any income. Her financial support included subsidizing prescriptions which her son's insurance did not fully cover. The out-of-pocket cost for those prescriptions, which her son needed to treat a chronic illness with which he had been diagnosed in January 2017, was "at least a couple hundred a month." After his son's girlfriend misappropriated the funds raised to pay for the funeral, Applicant paid about $14,000 for her son's funeral. She spent "a little over a year and a half" administering her son's estate for which she spent an unspecified amount of money on fees and expenses. Her ex-husband also contributed an unspecified amount towards those fees and expenses. (Tr. at 19-28, 45-48, 63, 69, 74-75, 77; AE P)

Between 2017 and 2018, Applicant went on short-term disability three times, which reduced her income. She could not recall "the total time" she took off on each occasion. Initially, she took leave for about six weeks to attend to her ill son. Then, she twice took leave for "a couple of weeks" each time to attend to her mental health which had suffered following the tragic passing of four of her colleagues. She and her co-workers, whom she also considered friends, were "all very close," and were negatively affected by the events surrounding those deaths. On each occasion that she was on short-term disability, she received either 35 or 65 percent of her pay. (Tr. at 24-28, 75-76)

Applicant's November 2022 credit report revealed four active credit cards (opened between 2014 and 2019), with balances of $1,073, $2,825, $1,354, and $6,324; and four loan accounts (opened between 2020 and 2022) with balances of $10,891, $20,269, $17,383, and $11,388. All the accounts were reported in good standing. No new delinquent debts were reported. Applicant used the credit cards to pay for gas, emergency expenses, and unspecified other expenses. She used the $11,388 loan to help finance her son's funeral and pay unspecified expenses; and the $17,383 loan to finance a recreational vehicle (RV) she used to visit her daughter in lieu of staying in hotels that did not allow dogs. As of the hearing, since she no longer needed it, the RV was for sale for an amount sufficient to cover the balance of the loan. The purpose of the other two loans were not indicated in the record. (AE H; Tr. at 86-89)

Applicant attended one financial counseling session in connection with the administration of her son's estate. She currently maintains her finances by using a budget, which she implemented in about 2017. She learned how to set up a budget via a program that her son purchased. She pays all her bills via bi-weekly automatic payments. (Tr. at 83-84)

Whole-Person Concept

Applicant submitted eight character reference letters, a resume, and a 2021 review lauding her work performance and character. By all accounts, she is trustworthy and

responsible. She has an exemplary work ethic. She ensures that she stays up to date on her training and certifications. (AE D-G)

At the hearing, Applicant explained,

> This has just been a series of horribly, tragic, unfortunate events that have left me financially strapped. But I do intend to fix this and make this right. It just isn't, unfortunately, something that can happen overnight. I have to take time and make it right. (Tr. at 58)

Policies

"[N]o one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan* at 531). "Substantial evidence" is "more than a scintilla but less than a preponderance." (*See v. Washington Metro. Area*

Transit Auth., 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. (ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016)). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). "[S]ecurity clearance determinations should err, if they must, on the side of denials." (*Egan* at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The concern under this guideline 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 record evidence and Applicant's admissions establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), and AG ¶ 19(c) (a history of not meeting financial obligations).

I considered each of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline and find the following warrant discussion:

(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.

None of the debts alleged in the SOR are currently in delinquent status. At no time did Applicant intentionally disregard her financial obligations. She proffered a reasonable plan to repay the student loans alleged in SOR ¶¶ 1.a. and 1.b. She paid the debt alleged in SOR ¶ 1.c in November 2021. The debt alleged in SOR ¶ 1.d was resolved in March 2016. She established a reasonable basis to dispute the legitimacy of the debt alleged in SOR ¶ 1.e, which did not appear on her November 2022 credit report.

I, *sua sponte*, took administrative notice of the fact that, beginning March 13, 2020, due to the COVID-19 pandemic, the DOE has been providing emergency relief for federal student loans, including the suspension of loan payments and collections on defaulted loans. On August 24, 2022, President Biden extended this COVID-19 relief through December 31, 2022. On November 22, 2022, the DOE announced an extension of the pause on federal student loan repayment, interest, and collections, to sometime in 2023. On June 7, 2023, after the U.S. Congress passed a law preventing further extensions of the pause, the DOE announced that interest payments will resume starting September 1, 2023, and payments will be due starting in October 2023.

The COVID-19 pandemic pause mitigates Applicant's post-pandemic inaction on the student loans. Her inaction before the pandemic is mitigated by circumstances beyond her control. Applicant credibly testified that she reasonably assumed that the student loans were in deferment status given what she believed was her daughter's continuous enrollment in a degree program. As of December 2022, the student loans were removed from default status.

Applicant demonstrated a track record of responsible action, through her consistent payments towards her divorce-related debts, including federal and state income taxes, that leads me to conclude that she will follow through with her plans to repay the student loans and avoid any future indebtedness. Although Applicant continues to rely on credit accounts to meet her expenses, she is current on each of those accounts. She has not incurred any new delinquent debts. I conclude that her finances are under control and attributable to circumstances unlikely to recur. I have no lingering doubts about her reliability, trustworthiness, and judgment. AG ¶¶ 20(a) through 20(e) apply to mitigate the Guideline F concerns.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by the debts alleged in the SOR. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for access to classified information.

Formal Findings

Formal findings 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.e:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge