



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



In the matter of:)	
)	
)	ISCR Case No. 21-02722
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

July 12, 2023

Decision Upon Remand

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On February 18, 2022, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR soon thereafter and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 15, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 22, 2022, scheduling the hearing for August 24, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 6, which were admitted into evidence. Applicant testified on her own behalf and called one witness. The record was left open until October 14, 2022, for receipt of additional documentation. Applicant offered three documents, which I marked Applicant’s Exhibits (AppXs) A through C and

admitted into evidence. DOHA received the transcript of the hearing (TR) on September 12, 2022.

The Appeal Board notes that, subsequent to the record being closed, “on November 16, 2022, a Federal court approved a settlement in a class action lawsuit, which affects the processing of borrowers defense applications.” The Appeal Board further notes a “DOE [Department of Education] press release indicates that Federal student loans . . . will be discharged, . . . and credit tradelines for those loans will be deleted from the member’s [Applicant’s] credit report.” (Appeal Board Decision at page 2.) I will therefore apply the DOE’s position most favorably to Applicant.

Findings of Fact

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.c.~1.i. and 1.k. She denied SOR allegations ¶¶ 1.b., 1.j. and 1.l. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 38-year-old employee of a defense contractor. She has been employed with the defense contractor since March 2019. Applicant is separated from her spouse, and has one child, age 13. (GX 1 at pages 7, 12 and 21~23.) She attributes much of her financial difficulties to a bad home environment that cause her to leave home, and resulted in periods of unemployment. (TR at page 39 line 20 to page 40 line 10.)

Guideline F - Financial Considerations

1.a., 1.d.~1.f., 1.h and 1.k. Applicant admits to outstanding student loans to college #1 totaling about \$18,668. On October 11, 2022, she submitted documentation seeking “loan rehabilitation.” (AppX A, and TR at page 42 lines 2~7.) Applying DOE’s November 2022 guidance, noted above, I find these student loans discharged, and deleted as unfavorable entries on Applicant’s credit report. These allegations are found for Applicant.

1.b. Applicant denies that she has a past-due debt to Creditor B in the amount of about \$4,350. (TR at page 16 line 11 to page 21 line 15.) As this debt appears as past-due on the Government’s May 2022 credit report; and Applicant has submitted nothing in this regard, such as a formal dispute of this entry, this allegation is found against Applicant.

1.c. and 1.g. Applicant admits to outstanding student loans to college #2 totaling about \$5,940. (TR at page 41 line 20 to page 42 line 1.) Applying DOE’s November 2022 guidance, noted above, I find these student loans discharged, and deleted as unfavorable on Applicant’s credit report. These allegations are found for Applicant.

1.j. and 1.l. Applicant denies that she has past-due debts to Creditor J in the amount of about \$970. As these alleged past-due debts do not appear on the Government’s May 2022 credit report, these allegations are found for Applicant.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 national security eligibility.

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 AG ¶ 2 describing 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 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. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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.

Section 7 of Executive Order (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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has significant past-due indebtedness. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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; 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

Applicant's financial problems are ongoing. As noted in the findings for subparagraph 1.b., Applicant still has a significant past-due debt, which she has chosen neither to pay nor formally dispute. Applicant has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations is found against Applicant.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant is respected in her community and in her workplace. She performs her job well. (AppX B.) If she successfully addresses the \$4,350, collection debt alleged in subparagraph 1.b., Applicant can certainly apply for a security clearance in the future. However, overall, the record evidence, at present, leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c~1.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge