



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



In the matter of:)	
)	
)	ISCR Case No. 21-02440
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: Carl Marrone, Esq.

08/10/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On March 16, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

On May 26, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2023, scheduling the hearing for June 26, 2023. I convened the hearing as scheduled. The

Government offered exhibits (GE) 1 through 5. There were no objections, and the exhibits were admitted in evidence. Applicant and three witnesses testified on her behalf. In her answer to the SOR, Applicant included Applicant Exhibits (AE) A through R. At her hearing, she offered AE S through AE W. There were no objections, and the exhibits were admitted in evidence. The record was held open until July 28, 2023, to permit Applicant an opportunity to provide additional documents. She provided AE X through AE Z. There were no objections. They were admitted in evidence, and the record closed. DOHA received the hearing transcript (Tr.) on July 13, 2023.

Procedural Matters

Applicant through Counsel, as a matter of full disclosure, advised the Government that they expected the evidence would show that Applicant failed to file her 2021 and 2022 federal income tax returns. The Government moved to amend SOR ¶ 1.a to include tax years 2021 and 2022. The record was held open to allow Applicant an opportunity to provide additional evidence, which she did as noted above. There was no objection to the motion, and it was granted. (Tr. 13-15)

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a and essentially denied the allegations in ¶¶ 1.b through 1.r. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. She married in 2022 and does not have children. She attended college at different times from 2006 to 2018. She earned an associate degree. She has been employed by a federal contractor since May 2021. (GE 1)

Applicant testified that her parents divorced in 2008. Her father had a drug addiction and sold drugs to finance his habit. He is in federal prison serving a 23-year sentence. She said he ruined her credit when he opened credit cards in her name in about 2010. Because of the amount of debt, her credit score was poor and when she went to purchase a vehicle, she had to pay a high interest rate. (Tr. 42-47; AE H, W)

In July 2015, Applicant was the victim of a horrific car accident when she was hit by a drunk driver. She suffered serious injuries and was hospitalized for six weeks. She had numerous surgeries and was on short-term disability. At the time, she was employed and was also attending college. She returned to work part-time after four months and received short-term disability, which was 60% of her normal pay. The driver of the vehicle was uninsured, and Applicant did not have uninsured motorist insurance. She testified that most of her medical bills were covered by her insurance, but she was responsible for those medical bills not covered. The driver was ordered to pay restitution (\$29,521) to Applicant as part of his probation but paid only \$1,700. She did not contact the medical creditors to propose a payment plan to resolve the unpaid medical debts alleged. (Tr. 26-42, 63-64, 103-104; AE G, H, I)

In May 2021, Applicant completed a security clearance application (SCA). She disclosed she was unemployed from April 2018 to June 2018. She testified that she was underemployed at different times in the past. She disclosed that she failed to file her 2019 federal income tax return. She stated: "I haven't had a chance to file my 2019 taxes. I do not owe money for 2019, it will be a refund. I am having an accountant work on it. I just finished 2020 taxes." (Tr. 54-55; GE 1)

In July 2021, Applicant was interviewed by a government investigator. She explained she had not filed her 2019 federal income tax return and was in the process of having her accountant prepare it, and it would be filed within the next month or so. She anticipated receiving a refund. She said she was otherwise current on all of her federal, state, and local taxes. She explained that she had financial issues because of her 2015 car accident, hospitalization for several months, the driver being uninsured, and she did not have uninsured motorist insurance. (GE 2)

In Applicant's SOR answer, she provided a document showing her 2019 federal tax return was filed in April 2022 and she was entitled to a refund. Applicant testified that because of the nature of her work she is not at home often. Her tax documents were being forwarded to a former residence. She said she was surprised to hear that her accountant had not filed her 2021 or 2022 tax returns. She acknowledged that she failed to follow up on her inquiries to him. She also testified she thought her tax returns for the past two years were completed. In her post-hearing submission, she provided photographs of text message threads to her accountant from April 2022 requesting him to complete her tax forms for tax year 2021. The threads are incomplete and only provide the first two lines of the conversation. The thread then has a May 2022 date where Applicant is apparently sending her accountant some information. It then jumps to June 28 and July 13, but does not indicate a year and appears to be from 2023. She is requesting the status of her 2021 tax returns so she can provide the judge the information. The information provided in this document is incomplete and is indecipherable. I am not in a position to guess what the rest of the text said or what tax year is being discussed. (Tr. 64-70, 119-122; GE 1; AE C, X)

Post-hearing, Applicant provided an IRS document to show she e-signed her 2022 federal tax return on July 13, 2023, and she owes \$17,304, which includes penalties and interest. No evidence was provided to show the tax debt was paid or a payment arrangement was made. No evidence was provided to show Applicant has filed her 2021 federal tax return. (AE Y)

Applicant also disclosed in her SCA that she had debts turned over to collection agencies. She specifically listed the medical debts alleged in SOR ¶¶ 1.i (\$1,555) and 1.o (\$280). She also disclosed in the SCA the three credit card debts alleged in SOR ¶¶ 1.j (\$949), 1.l (\$693), and 1.m (\$566). For each of the debts she said her 2015 car accident caused her to have financial issues. The driver at fault was to pay her restitution and did not. She fell behind on her bills while she was recuperating and on short-term disability. She stated for each collection account that she was "looking into debt consolidation." She

did not disclose any of her student loans. She did not dispute the legitimacy of any of these debts that she disclosed. (GE 1)

Applicant acknowledged to the investigator during her interview that she was responsible for some medical debts related to her accident, specifically the debts alleged in SOR ¶¶ 1.i and 1.o that she disclosed. She said she intended to pay them as soon as she was able. In her SOR answer, Applicant acknowledged incurring these debts but disputes their legitimacy because they resulted from medical treatment she received after being the victim in a car accident where the driver was uninsured. She testified that she paid these debts and would provide proof of payment. She did not. These debts are unresolved. (Tr. 86-88, 93-95)

Applicant acknowledged to the investigator that she was responsible for the credit card debts in SOR ¶¶ 1.j, 1.l, and 1.m and intended to pay these debts when she was able. In her SOR answer, Applicant acknowledged she incurred the credit card debts in SOR ¶¶ 1.j and 1.l but said she was unable to pay the debts after she was the victim of a drunk driving accident with an uninsured motorist. In her SOR answer, she denied the debt in SOR ¶ 1.m. She testified that she only had one credit card at the time of her accident and has disputed the others through Credit Karma. This is inconsistent with the debts she disclosed in her SCA. She has not contacted the creditors to obtain information about the debts. The debts have different account numbers and were opened at different times. She also denied the debt in SOR ¶ 1.p (\$198). She testified that this is a medical debt for an emergency room visit from 2021. She did not have medical insurance. She said she paid it and would provide proof. She did not. These debts are unresolved. (Tr. 88-93, 95-96, 104-105; Answer to SOR; GE 2, 4)

Applicant was confronted by the investigator with the debt alleged in SOR ¶ 1.e (\$2,899). She believed it was a car loan and she was going to contact the creditor to make payment arrangements to settle the debt. In Applicant's SOR answer, she acknowledged the debt existed, but disputes its legitimacy. She noted the debt is now charged off and does not appear on her April 2022 credit report. She testified that prior to her accident she missed one car payment on this loan. After her accident the debt became delinquent, and she was unable to make the payments and it was repossessed. She has not contacted the creditor in the past eight years. She testified she intended to pay the debt. The debt is unresolved. (Tr. 81-85; AE E)

Applicant was confronted with the delinquent student loans alleged in SOR ¶¶ 1.b (\$5,102), 1.c (\$3,943), 1.d (\$3,795), 1.f (\$2,610), 1.g (\$2,175), 1.h (\$1,831), 1.k (\$716) and 1.n (\$353). She told the investigator that she was attempting to have the loans consolidated and intended to pay them as soon as she was able. These loans were delinquent before the pandemic. In Applicant's answer to the SOR, she admitted the student loans alleged are hers but denied the debts are currently owed because there is a moratorium on student loan payments due to the pandemic. She testified she has not yet consolidated the loans but still planned to do so. (Tr. 70-81, 102; AE D)

Applicant testified that she started college in 2006, took 2007 off, and resumed classes in 2008. She was taking two classes a semester and took the summers off. She was also working full time. She said from 2008 to 2015 she was only taking two classes a year. She had a scholarship for her tuition in 2006, but not for the other periods she attended, for which she took student loans. After her 2015 car accident she took off one to two years before returning to school. She said she took classes before she moved in 2020. She said she made one payment towards her student loans and then they were paused due to the pandemic. The documented loan payment of \$25 was paid in May 2022. She acknowledged that she was aware her student loans were delinquent before the pandemic and sometime in 2020 she was receiving notices from the creditors that the loans were delinquent. She did not contact the creditors to obtain an income-based payment plan or consolidate the loans. (Tr. 70-81, 102; Answer to the SOR; GE 2; AE D, K, L)

Applicant was confronted by the investigator with the debt in SOR ¶ 1.r (\$6,923). She acknowledged that she had a car loan with the creditor and the vehicle was repossessed because she could no longer make the payments. She was unaware there was an outstanding balance, and she had not received any communication from the creditor concerning the account. She intended to contact the creditor and make payment arrangements to settle the debt. In her SOR answer, she acknowledged incurring the debt by financing a vehicle she purchased for her boyfriend who was to make the payments, but he did not and abandoned the vehicle. She indicated that her April 2022 credit report showed that the debt is charged off. Her June 2023 credit report shows the account was opened in March 2018 and her last activity was July 2018. She testified that this debt was for a car she purchased and returned after six weeks because she no longer could afford the payments when she had to move unexpectedly. This contradicts her SOR answer. She said she contacted the creditor several weeks before her hearing and had a settlement offer. In her post-hearing submission, she provided a document from the creditor offering her options to settle the debt. She did not provide any other evidence regarding whether she accepted an option and made a payment. The debt is unresolved. (Tr. 97-99; Answer to SOR; GE 2, 5; AE E)

Applicant was confronted with the debt alleged in SOR ¶ 1.q (\$161) owed for cable services. She moved residences and left the equipment with her roommate who was supposed to cancel the account and return the equipment. Her roommate failed to do so, and Applicant was billed for the equipment. She intended to pay the debt as soon as she was able. In her SOR answer, she provided proof that she settled (\$105) the debt in May 2022. This debt is resolved. (Tr. 96-97; AE F)

The SOR allegations are corroborated by Applicant's disclosures in her SCA, her answer to the SOR, her interview with a government investigator, and her testimony. Credit reports from June 2021, February 2022 and June 2023 also corroborate the debts alleged. (GE 1, 2, 3, 4, 5)

Applicant testified that her current finances are stable, and she pays her monthly expenses on time. She and her husband rent a house but spend minimal time there due

to the nature of their jobs. She has not participated in any credit or financial counseling. (Tr. 56-63, 124-126; AE S, T, U, V)

Witnesses testified on Applicant's behalf. They described her as having good judgment, and testified that her financial issues are in her past and do not impact her character. She pays her current bills on time and is organized. Applicant provided character letters that describe her as trustworthy, caring, loyal, hardworking, dependable, enthusiastic, honest, reliable, and responsible. (Tr. 126-148 AE M, N, O, P, R)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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 taxes as required.

Applicant has numerous delinquent debts. She failed to timely file her 2019, 2021 and 2022 federal income tax returns. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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, 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;

(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; and

(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.

Applicant was the victim of a horrific car accident in 2015 that seriously impacted her physically. Her parents' divorce and the circumstances surrounding her father's incarceration and misuse of her credit also seriously impacted her finances whereby it was costly for her to obtain credit. I have considered that her earnings were reduced while she recuperated from her injuries. I have also considered that the driver who caused the accident was uninsured and failed to pay restitution. These were conditions beyond Applicant's control.

It is unfortunate that some of Applicant's medical expenses were not covered by her insurance. It is unfortunate that she chose not to have uninsured motorist coverage. It is also unfortunate that when making a car purchase, Applicant had to pay a high interest rate. When Applicant completed her SCA and was interviewed by a government investigator, she disclosed delinquent debts that she was responsible to pay for medical services rendered or for purchases she made using credit cards. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. She has

been gainfully employed for several years and it has been more than two years since completing her SCA. She has paid only one small debt after receiving the SOR (§ 1 q). Although payments on her student loans are not currently due because of the COVID pandemic moratorium, they were in a default status before then. She provided one document to show she made a \$25 student loan payment after receiving the SOR. The fact that certain debts have been charged off does not mean she acted responsibly towards addressing them. There is insufficient evidence to conclude that Applicant has acted responsibly regarding her delinquent debts. AG § 20(b) partially applies.

In her SCA, Applicant disclosed that she failed to timely file her 2019 federal income tax return, and it would be completed soon. She told the investigator in July 2021 that it would be filed in the next month or so. She provided a document to show it was filed in April 2022, after receipt of the SOR. She failed to provide proof that her federal income tax return was filed for 2021. Her 2022 federal tax return was filed late in July 2023. She owes more than \$17,000 for tax year 2022. AG § 20(g) applies to her 2019 and 2022 tax returns. It does not apply to her 2021 federal income tax return.

There is no evidence that Applicant has received financial counseling or that there are clear indications that her problems are being resolved or under control. AG § 20(c) does not apply. Applicant has not made good-faith efforts to repay her delinquent debts, except for one. AG § 20(d) only applies to SOR § 1.q. Applicant has made minimal effort to repay her creditors. Her debts are numerous and recent. Not all of her debts are medical or the result of her accident. She purchased a vehicle for her boyfriend and failed to make the payments. She has been offered a settlement, but it remains unresolved. AG § 20(a) does not apply.

Applicant acknowledged incurring medical and credit cards debts and disclosed them on her SCA, but then disputed their legitimacy because she was a victim in a car accident, and she is unable to pay them. She has failed to provide documented proof as to why these are not legitimate debts and evidence of actions to resolve them. AG § 20(e) does not apply.

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(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. Some of the factors in AG ¶ 2(d) were addressed under that Guideline, but some warrant additional comment.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. *See, e.g.,* ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.,* ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018). This is true even when the returns are eventually filed and the taxes paid.

Applicant has not established a reliable financial track record. She has not met her burden of persuasion. The record evidence 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 security concerns arising under Guideline F, financial considerations.¹

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-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant

¹ In Applicant's SOR answer, she requested consideration of a waiver with appropriate conditions. The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded a conditional clearance in this case is not warranted.

Conclusion

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

Carol G. Ricciardello
Administrative Judge