



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-02097
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2023

Decision

BLAZEWICK, Robert B., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 24, 2020. On September 28, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR in an undated document, and requested a decision on the written record in lieu of a hearing.

A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on December 5, 2022. As of January 4, 2023, she had not responded. On January 26, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM Item 1 contains the pleadings in the case - the SOR and the Answer). Items 2 - 9 were offered as substantive evidence.

The case was assigned to me on February 21, 2023. On May 24, 2023, I re-opened the record to allow Applicant to submit additional documentation in support of her answers to the SOR. The record closed on June 22, 2023. Applicant did not submit any additional evidence. Department Counsel submitted an additional credit report dated May 24, 2023. I marked the May 2023 report as Item 10. Applicant did not respond to either the FORM or Item 10. The Government exhibits included in the FORM, as well as Item 10, are admitted in evidence.

Findings of Fact

Applicant admitted all of the allegations in SOR except the allegation in SOR ¶ 1.l. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 66 years old. She has been employed as a machine operator by a defense contractor since 1996. She has held a security clearance since 1996. She has an associate degree, which she earned in 2013. She is single with one adult child. (Item 2)

The SOR alleges four defaulted student loans totaling \$25,716 (SOR ¶¶ 1.a, 1.b, 1.e, and 1.g); eight miscellaneous delinquent debts currently in collection totaling \$9,927 (SOR ¶¶ 1.c, 1.d, 1.f, 1.h-1.l); and one judgment for \$1,728 taken in July 2017 (SOR ¶ 1.m). Applicant admitted owing the student loans, but states she thought the total was less. She admitted all but one of the remaining debts and stated she was making payments on four of them. She did not provide documentary support. The alleged debts are listed on a July 2017 credit report, a December 2020 credit report, an October 2022 credit report, and a record of judgment. (Items 1, and 5-9) Applicant provided no documentary or testimonial support.

In her SCA, Applicant did not report her defaulted student loans, her debts that were in collection, or the judgment taken against her. Applicant was interviewed by a government investigator on March 11, 2021. She initially denied she had either defaulted on any type of loan or was more than 120 days delinquent on any debt in the past seven years. When confronted with her debts by the investigator she admitted most of them were hers. Applicant admitted the debts alleged in SOR ¶¶ 1.a, 1.b, 1.e, and 1.g, the student loans, as well as the debts alleged in SOR ¶¶ 1.c, 1.f, 1.h, 1.j -1.l. She disputed the debts listed in SOR ¶¶ 1.d and 1.i. Applicant stated she was surprised how large the student loans were. She stated she began to fall behind in her debts in 2018 when her overtime hours were curtailed. Applicant noted she had worked out a payment agreement with her mortgage lender as she had fallen behind and would contact the creditors discussed in the interview to attempt to work out a payment plan. (Item 4)

An October 2022 credit report shows Applicant had not made any payments on her student loans, SOR ¶¶ 1.a, 1.b, 1.e and 1.g. All were listed as having been placed for collection, though are likely in a suspended status due to the COVID relief from the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of March 27, 2020, and subsequent Executive Orders. That status will end in October 2023. The debts listed in SOR ¶¶ 1.c, 1.d, 1.f, 1.h - 1.l were also unchanged.

After I re-opened the record, Department Counsel submitted a more recent credit bureau report on May 24, 2023. The May 2023 credit report reflects only a single student loan in the amount of \$16,316. The report states it is “at least 120 days or more than four payments past due” and notes the most recent payment was made in July 2019. This student loan was not alleged in the SOR. The student loans alleged in SOR ¶¶ 1.a, 1.b, 1.e and 1.g do not appear in the May 2023 credit report. While it is likely in a suspended status due to the CARES Act, Applicant has presented no evidence to demonstrate their status. The debts listed in SOR ¶¶ 1.f, 1.j and 1.k are reported. The remaining debts alleged in SOR ¶¶ 1.c, 1.d, 1.h, 1.i, and 1.l do not appear in the May 2023 credit report. Though I did not consider it in making my determination, the May 2023 credit report indicates Applicant had an additional debt that was charged off.

Applicant stated in her answer to the SOR that she was making monthly payments on four of the debts in the SOR: (a) A credit card account for an account placed for collection in the approximate amount of \$2,339 (SOR ¶ 1.c); (b) A credit card debt charged off in the approximate amount of \$1,224 (SOR ¶ 1.f); (c) A credit card debt for an account placed for collection in the approximate amount of \$677 (SOR ¶ 1.h); and (d) A consumer loan debt for an account placed for collection in the approximate amount of \$226 (SOR ¶ 1.i). (Item 1)

Though Applicant did not provide any additional support, none of the four accounts she stated she is making monthly payments on appear in either the October 2022 credit report or the May 2023 credit report. It appears, therefore, that Applicant has paid or settled these debts. (Items 6, 7, and 10)

The judgment in SOR ¶ 1.m taken by a creditor, was agreed to on February 18, 2018, and is supported by the record of judgment. (Items 8 and 9)

Applicant denied the allegation in SOR ¶ 1.l. regarding a \$2,353 credit card on an account that has been charged off. Applicant denied this in her answer to the SOR stating she has “a credit card with [the same credit card company] now.” This argument is not persuasive. (Item 1)

I have taken administrative notice that in March 2020, as a result of the COVID-19 pandemic, the President directed the Department of Education (DoEd) to provide the following temporary relief on DoEd-owned federal student loans: suspension of loan payments, stopped collections on defaulted loans, and a 0% interest rate. On March 27, 2020, the CARES Act provided for the above relief measures through September 30, 2020. See Federal Student Aid (FSA) website, ISCR Case No. 20-02787 at 3 n.1 (App. Bd. Mar. 2022) This student loan debt relief was extended several times by subsequent Executive Orders. See <https://studentaid.gov/announcements-events/covid-19>. Congress recently barred any further extensions and DoEd has announced that student loan repayments will resume in October 2023. See <https://studentaid.gov/debt-relief-announcement>.

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, 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(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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of 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 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.

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
- (b) a history of not meeting financial obligations.

Applicant has a history of financial problems, including delinquent debts and multiple defaulted student loans. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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.

The four debts Applicant stated in her answer to the SOR on which she was making monthly payments do not appear on the two most recent credit reports. Those debts are mitigated. She has known about the remaining debts for some period. She has provided no documentation, plan, or proof of any additional action regarding these debts. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). She stated in her interview she planned to pay other debts, including her student loans. However, intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances or that she made a good-faith effort to pay her debts. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant’s remaining debts are not mitigated.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.m:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert B. Blazewick
Administrative Judge